WORKSHOP MEETING OF THE BOARD OF DIRECTORS WITH MET DIRECTORS MUNICIPAL WATER DISTRICT OF ORANGE COUNTY 18700 Ward Street, Board Room, Fountain Valley, California April 5, 2023, 8:30 a.m.

This meeting will be held in person. As a convenience for the public, the meeting may also be accessed by Zoom Webinar and will be available by either computer or telephone audio as indicated below. Because this is an inperson meeting and the Zoom component is not required, but rather is being offered as a convenience, if there are any technical issues during the meeting, this meeting will continue and will not be suspended.

Computer Audio: You can join the Zoom meeting by clicking on the following link:

https://zoom.us/j/8828665300

Telephone Audio: (669) 900 9128 fees may apply

(877) 853 5247 Toll-free

Webinar ID: 882 866 5300#

AGENDA

PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC PARTICIPATION/COMMENTS

At this time members of the public will be given an opportunity to address the Board concerning items within the subject matter jurisdiction of the Board. Members of the public may also address the Board about a particular Agenda item at the time it is considered by the Board and before action is taken.

The Board requests, but does not require, that members of the public who want to address the Board complete a voluntary "Request to be Heard" form available from the Board Secretary prior to the meeting.

ITEMS RECEIVED TOO LATE TO BE AGENDIZED

Determine need and take action to agendize item(s), which arose subsequent to the posting of the Agenda. (ROLL CALL VOTE: Adoption of this recommendation requires a two-thirds vote of the Board members present or, if less than two-thirds of the Board members are present a unanimous vote.)

ITEMS DISTRIBUTED TO THE BOARD LESS THAN 72 HOURS PRIOR TO MEETING

Pursuant to Government Code Section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection in the lobby of the District's business office located at 18700 Ward Street, Fountain Valley, California 92708, during regular business hours. When practical, these public records will also be made available on the District's Internet Web site, accessible at http://www.mwdoc.com.

NEXT RESOLUTION NO. 2137

PRESENTATION/DISCUSSION ITEMS

1. PRESENTATION BY MET STAFF UPDATING THE BOARD ON WATER SURPLUS AND DROUGHT MANAGEMENT CONDITIONS

Recommendation: Review and discuss the information presented.

2. LEGISLATIVE ACTIVITIES

- a. Federal Legislative Report (NRR)
- b. State Legislative Report (BBK)
- c. Legal and Regulatory Report (Ackerman)
- d. County Legislative Report (Whittingham)
- e. MWDOC Legislative Matrix

Recommendation: Review and discuss the information presented.

3. QUESTIONS OR INPUT ON MET ISSUES FROM THE MEMBER AGENCIES/MET DIRECTOR REPORTS REGARDING MET COMMITTEE PARTICIPATION

Recommendation: Receive input and discuss the information presented.

ACTION ITEMS

4. AB 557 (HART) – OPEN MEETINGS: TELECONFERENCES

Recommendation: Vote to adopt a support position on AB 557 (Hart) and join CSDA's

coalition letter and outreach efforts.

5. AB 735 (BERMAN) – WORKFORCE DEVELOPMENT: UTILITY CAREERS

Recommendation: Vote to adopt a support position on AB 735 (Berman) and join

CMUA's coalition letter and outreach efforts.

6. AB 1572 (FRIEDMAN) – POTABLE WATER, NONFUNCTIONAL TURF

Recommendation: Vote to adopt an oppose unless amended position on AB 1572

(Friedman) and join ACWA's coalition letter and outreach efforts.

7. SB 366 (CABALLERO) – THE CALIFORNIA WATER PLAN: LONG-TERM SUPPLY TARGETS

Recommendation: Vote to adopt a support position on SB 366 (Caballero) and join

CMUA's coalition letter and outreach efforts.

8. AB 460 (BAUER-KAHAN), AB 1337 (WICKS), & SB 389 (ALLEN): WATER RIGHTS

Recommendation: Vote to adopt an oppose position on AB 460 (Bauer-Kahan), AB

1337 (Wicks), and SB 389 (Allen), and join ACWA and CMUA's

coalition and outreach efforts.

INFORMATION ITEMS

- **9. MET ITEMS CRITICAL TO ORANGE COUNTY** (The following items are for informational purposes only a write up on each item is included in the packet. Discussion is not necessary unless requested by a Director)
 - a. MET's Finance and Rate Issues
 - b. MET's Water Supply Condition Update
 - c. Water Quality Update
 - d. Colorado River Issues
 - e. Delta Conveyance Activities and State Water Project Issues

Recommendation: Review and discuss the information presented.

10. METROPOLITAN (MET) BOARD AND COMMITTEE AGENDA DISCUSSION ITEMS

- a. Summary regarding March MET Board Meetings
- b. MET 4-Month Outlook on Upcoming Issues
- c. Review items of significance for MET Board and Committee Agendas

Recommendation: Review and discuss the information presented.

ADJOURNMENT

Note: Accommodations for the Disabled. Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by telephoning Maribeth Goldsby, District Secretary, at (714) 963-3058, or writing to Municipal Water District of Orange County at P.O. Box 20895, Fountain Valley, CA 92728. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that District staff may discuss appropriate arrangements. Persons requesting a disability-related accommodations should make the request with adequate time before the meeting for the District to provide the requested accommodations.



DISCUSSION ITEM April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre, Interim General Manager

Staff Contact: Melissa Baum-Haley

SUBJECT: PRESENTATION BY MET STAFF UPDATING THE BOARD ON WATER

SURPLUS AND DROUGHT MANAGEMENT CONDITIONS

STAFF RECOMMENDATION

Staff recommends the Board of Directors discuss and file this information.

REPORT

Since January of this year, California has seen significant relief from the prior three years of drought conditions. The 8-station index is at 134% of normal, with many reservoirs across the state showing significant gains in storage since January 1, 2023. Likewise, while not as significant, accumulated snowpack and hydrological conditions are also improving within the Colorado River Basin.

Due to the significantly improved conditions across the state and the increases in the "Table A" allocation, Governor Newsom signed Executive Order N-5-23 on March 24, whereby:

- Local water agencies no longer required to implement Level 2 actions of WSCPs
- Wasteful watering practices continue to be banned

Depleted reservoirs are starting to recover from record lows, and the Department of Water Resources (DWR) continues to increase the State Water Project "Table A" allocations. The initial allocation in December's of 5% was increased to 30% in January, 35% in February, 75% in March, and DWR expects at least one more increase is expected following April and/or May snowpack surveys. Additionally, due to storage levels at San Luis Reservoir, DWR announced that they were making Article 21 supplies available to the State Water

Budgeted (Y/N): N/A	Budgeted a	amount: None	Core <u>X</u>	Choice
Action item amount: N/A		Line item:		
Fiscal Impact (explain if unbudgeted):				

Contractors for additional storage opportunities. In the last two weeks, Metropolitan have already received more than 80 TAF of Article 21 deliveries.

As a result, on March 27, Metropolitan and state officials came together at Diamond Valley Lake (DVL) to share the operational actions being taken to maximize the amount of water stored in depleted reservoirs and groundwater basins, as well as encourage Southern Californians to continue conserving. Metropolitan began refilling DVL, Southern California's largest reservoir (81 TAF), and other depleted storage, for the first time in three years.

The improved conditions also allowed the Metropolitan board this month to rescind its emergency conservation restrictions that had since June mandated a 35 percent reduction in water use for nearly 7 million people in portions of Ventura, Los Angeles and San Bernardino counties that are dependent on water from the State Water Project.



Locally, Orange County has received 189% of average precipitation, allowing for the significant reduction in water demands and the ability for local water agencies to build surface and groundwater storage reserves.

Due to the improved water supply conditions on the SWP system, on April 6 Metropolitan is hosting a Member Agency Groundwater/Reservoir Storage Workshop with staffs to coordinate on Metropolitan's groundwater and surface reservoir management programs and operations. We believe such discussions at Metropolitan are critical to the integration of inregion and out-of-region supplies and both MWDOC and OCWD will be participating in this workshop.

To provide an update on the current water surplus and drought management conditions, MWDOC staff has invited Brad Coffey, group manager of Water Resource Management for the Metropolitan to present.



To: Board of Directors, *Municipal Water District of Orange County*

From: Natural Resource Results

RE: Monthly Board Report – April 2023

Fiscal Year 2024 Appropriations

On March 9th, President Biden transmitted his fiscal year 2024 budget to Congress. This was roughly a month later than the budget is typically sent to Congress and the Administration points to the fact that the fiscal year 2023 omnibus did not pass until December, which delayed the fiscal year 2024 budget development.

Details from the Bureau of Reclamation include:

- \$13.6 million for WaterSMART grants (FY23 enacted = \$65 million)
- \$2.2 million for Cooperative Watershed Management under WaterSMART (FY23 enacted = \$5 million)
- \$24 million for Drought Response under WaterSMART (FY23 enacted = \$38 million)
- \$7 million for Desal and Water Purification Research Program (FY23 enacted = \$17 million)
- \$2 million for Salton Sea Research Project (FY23 Enacted = \$2 million)
- \$33 million for CALFED (FY23 Enacted = \$33 million)
- \$48.5 million for CVPIA Restoration Fund (FY23 Enacted = \$45.7 million)

On Wednesday March 29th, Commission Touton testify on the Bureau of Reclamation's budget in the House Appropriations Subcommittee on Energy and Water Development and Related Agencies. Commissioner Touton received a question from a Midwestern Democrat about how Reclamation can use its budget to deal with the water-whiplash that the west is facing between flood and drought. The Commissioner responded that Reclamation is trying to prioritize investments in places where the can get multiple benefits and pointed to the BF Sisk raise as an example of a project that is intended to address seismic issues, but also creates more storage capacity for water supply and for flood control. She also mentioned that Reclamation is partnering with the Corps on Forecast Informed Reservoir Operations (FIRO).

Rep. Lee (D-NV) asked Commissioner Touton if the Colorado River was oversubscribed to which the Commissioner replied, "The hydrology that we are seeing shows less water coming into the reservoirs." Rep. Lee encouraged Commissioner Touton to move forward with the 6-state agreement and asked for an updated on the SEIS process currently underway. Commissioner Touton stated that the process is on an expedited path and that a draft SEIS will be available later this spring.

WEROC

We have submitted earmark requests for a mobile EOC for WEROC to Senator Feinstein, Senator Padilla, and Congresswoman Kim. In both chambers, member offices are required to submit their earmark requests to the full Appropriations Committee by late March/early April.

WOTUS

A federal judge in Texas recently blocked implementation of the Administration's new WOTUS rules in two states – Idaho and Texas – but stopped short of granting a nationwide injunction. The new rule took effect in the rest of the country on Monday March 20th.

Opponents of the rule continue to argue that the Supreme Court decision in the *Sackett vs. EPA* case, which is expected later this summer, will nullify large parts of the new WOTUS rule and therefore implementation should be put on hold until the Supreme Court has ruled on the issue.

Colorado River

On Monday, February 27th, Congresswoman Napolitano and Congressman Calvert hosted a briefing for all California House members on the status of the Colorado River and ongoing negotiations in the Basin. Representatives from IID, Met and the Six Agencies presented to Hill staff about the California proposal and the differences between it and the six states proposal as well as the timeline for the SEIS Statement process.

On March 15th, Congressman Neguse (D-CO) and Congressman Ciscomani (R-AZ) announced the formation of a Colorado River Caucus in the House. Current caucus members include the following:

- Greg Stanton (D-AZ)
- Grace Napolitano (D-CA)
- Jay Obernolte (R-CA)
- Doug Lamborn (R-CO)
- Dina Titus (D-NV)
- Mark Amodei (R-NV)
- Melanie Stansbury (D-NM)
- Teresa Leger Fernandez (D-NM)
- Chris Stewart (R-UT)
- John Curtis (R-UT)

House Natural Resources Committee

On Tuesday March 28th, the House Natural Resources Committee's subcommittee on Water, Wildlife and Fisheries held a hearing title "Why We Need to Store More Water and What is Stopping Us" with the following individuals serving as witnesses:

- William Bourdeau, Vice Chair, San Luis & Delta-Mendota Water Authority
- Tricia Hill, Board Member, Klamath Water Users Association

- Andy Mueller, General Manager, Colorado River Conservation District
- Joshua Sewell, Senior Policy Analyst, Taxpayers for Common Sense

During the hearing, Republicans made the case that the ESA and NEPA are what slow down new storage projects. Democrats pushed back and pointed out that the beneficiary pays principle, which both sides of the aisle said they support, is the real hinderance because many of the good locations for dams have already been developed. Democrats made the case that places where dams are proposed today have lower water yields due to their less-than-ideal locations, thus the numbers just don't pencil out for water agencies and project proponents.

There seemed to be tacit agreement on both sides of the aisle that there are places where improving, raising, or retrofitting existing dams makes sense but there was clear disagreement over the need for additional surface storage. There was also agreement that better forest management, particularly in high mountain watersheds, has positive impacts on water supply.

California Water Infrastructure Act

Congressman Garamendi is circulating a draft water bill that covers a broad suite of water issues. The Congressman is seeking feedback on the draft bill by the end of April. A section-by-section and legislative text are attached for your review.

DISCUSSION DRAFT: California Water Infrastructure Act

SECTION-BY-SECTION SUMMARY:

SECTION 1: Short Title

SECTION 2: Substitution of Equivalent State Environmental Reviews

- Allows the U.S. Bureau of Reclamation to accept environmental reviews prepared under state laws like the California Environmental Quality Act as equivalent to federal reviews under the National Environmental Policy Act (NEPA).
- Obviates the need for a redundant federal NEPA review for western water projects with the Bureau of Reclamation if an equivalent or more stringent statement environmental review, as determined by the Commissioner, has already been completed.
- Based on existing substitution authority for state environmental review documents created by Congress under Section 1309 of the FAST Act (2015 Highway Bill) for surface transportation projects funded by the Federal Highway Administration, see 23 U.S.C. 330.

SECTION 3: Amendments to the Infrastructure Investment and Jobs Act

- Creates new competitive grant program for the 17 Reclamation states, Alaska, and Hawaii for the Bureau of Reclamation to fund:
 - Voluntary consolidations of small water systems served by a Reclamation project (reserved or transferred work) or Reclamation-funded project to increase efficiency and improve service.
 - Voluntary conversions of privately owned water systems into public water systems served by a Reclamation project (reserved or transferred work) or Reclamation-funded project.
- Cannot be used for privatization of water systems for irrigation or potable water.
- Based on consolidation incentive for public water systems under the Safe Drinking Water Act's State Revolving Loan Fund, see 42 U.S. Code §300g–3(h).

SECTION 4: Limit on Central Valley Project Restoration Fund Administrative Costs

- Requires that all federal agency expenditures from the Central Valley Project Restoration Fund be published online with detailed project descriptions.
- Provides opportunity for public comment each fiscal year on projects proposed by federal agencies for funding from the Central Valley Project Restoration Fund.
- Provisions on increased public oversight and input into Central Valley Project Restoration Fund activities by federal agencies originally from Rep. Garamendi and Sen. Feinstein's "California

Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act" from the 114th Congress.

- Places standard "good government" cap for the U.S. Fish and Wildlife Service's allowable administrative costs from the Central Valley Project Restoration Fund at not more than 5% annually.
- Directs the Fish and Wildlife Service to outline all administrative costs taken from the Central Valley Project Restoration Fund as a separate line item in the agency's annual budget request to Congress (President's budget).
- Ensures that funding contributed annually by water and hydropower users to the Central Valley Project Restoration Fund is used for on-the-ground projects, per original Congressional intent in 1992.

SECTION 5: Amendments to the WIIN Act

- Requires the Bureau of Reclamation to make guidelines for feasibility studies for State-led water storage projects.
- Allows Congressionally appropriated funds for State-led water storage projects to also be used to complete permitting and mitigation work for those projects.
- Noncontroversial amendments to the 2016 WIIN Act originally from Rep. Garamendi's bipartisan "Sites Reservoir Project Act" from the 116th Congress.
- Ensures that only projects eligible under the WIIN Act may receive funding from Congressional appropriations authorized under that 2016 law, specifically those projects with completed feasibility determinations by the January 1, 2021, deadline.

SECTION 6: Use of Revenue to Improve Project Safety

- Allow federal proceeds from the sale of water from Reclamation projects to be used to fund safety of dams work or repayment of federal construction costs for that project.
- Provides dedicated funding at no cost to taxpayers for dam safety improvements at Reclamation projects including to meet higher state standards like the California Department of Water Resources' Division of Safety of Dams.
- Originally from Reps. Garamendi's bipartisan "Orland Project Transfer Act" and Sen.
 Feinstein's "Support To Rehydrate the Environment, Agriculture, and Municipalities (STREAM)
 Act" from the 117th Congress.
- Federal funding can only be used to satisfy the federal dam safety standards, effectively prohibiting potential transferred works like the Orland Project from meeting California's higher state standards for safety.

SECTION 7: Delta Research Station

- Directs the Fish and Wildlife Service to construct and operate the proposed Delta Research Station at the decommissioned Rio Vista Army Base in the heart of the Sacramento-San Joaquin Delta.
- Requires the Fish and Wildlife Service to partner with the State of California in developing the Delta Research Station, including the two constituent facilities: the State's Rio Vista Estuarine Research Station and the Service's Fish Technology Center.

SECTION 8: New Fish Hatchery on Sacramento River Mainstem

- Authorizes the Bureau of Reclamation to build a new fish hatchery for federally listed Chinook salmon and other endangered fish species at the Red Bluff Diversion in Tehama County.
- Provides dedicated funding at no cost to taxpayers for the construction, operation, and maintenance of the new fish hatchery from the Sacramento and Central Valley Project water contractors' annual contributions to the Central Valley Project Restoration Fund.
- New hatchery will allow salmon smolts to better imprint on water from the mainstem of the Sacramento River, increasing survivability and with lower staying rates than the Fish and Wildlife Service's existing Coleman National Fish Hatchery on Battle Creek in Shasta County.

SECTION 9: Technical Amendments

Noncontroversial amendments originally from Rep. Costa's "<u>Water Transfer Facilitation Act of 2009</u>" from the 111th Congress fixing typos in the Central Valley Project Improvement Act.

SECTION 10: Report to Congress

- Directs the Bureau of Reclamation and the to report to Congress on the implementation of the agreement with the U.S. Environmental Protection Agency to help administer federal financing for western water projects under the *Water Infrastructure Finance and Innovation Act* (WIFIA).
- This 2018 authority is effectively the "mini" Reclamation Infrastructure Finance and Innovation
 Act.

	(Original Signature of Member)
117'	TH CONGRESS 2D SESSION H.R.
	o expedite the completion of water supply projects in Reclamation States eliminating duplication of environmental reviews, and for other purposes.
	IN THE HOUSE OF REPRESENTATIVES
Ŋ	Mr. Garamendi introduced the following bill; which was referred to the Committee on
	A BILL
То	expedite the completion of water supply projects in Reclamation States by eliminating duplication of environmental reviews, and for other purposes.
1	Be it enacted by the Senate and House of Representa-
2	tives of the United States of America in Congress assembled,
3	SECTION 1. SHORT TITLE.
4	This Act may be cited as the "California Water Infra-
5	structure Act".
6	SEC. 2. SUBSTITUTION OF EQUIVALENT STATE ENVIRON
7	MENTAL REVIEWS.

8

(a) DEFINITIONS.—In this section:

1	(1) Qualified state environmental re-
2	VIEW.—The term "qualified State environmental re-
3	view" means a State environmental review of a rec-
4	lamation project that the Commissioner of the Bu-
5	reau of Reclamation, in consultation with the Chair-
6	man of the Council on Environmental Quality, deter-
7	mines meets or exceeds the requirements relating to
8	making detailed statements under section 102(2)(C)
9	of the National Environmental Policy Act of 1969
10	(42 U.S.C. 4332(2)(C)).
11	(2) RECLAMATION PROJECT.—The term "rec-
12	lamation project''—
13	(A) means a reclamation project carried
14	out under the Act of June 17, 1902 (32 Stat.
15	388; ch. 1093), or any Acts amendatory thereof
16	or supplemental thereto; and
17	(B) includes—
18	(i) a State-led storage project, as de-
19	fined in section 4007(a) of the WIIN Act
20	(43 U.S.C. 390b note);
21	(ii) a rural water supply project, as
22	defined in section 102 of the Reclamation
23	Rural Water Supply Act of 2006 (43
24	U.S.C. 2401);

1	(iii) a rural water project authorized
2	and carried out in accordance with the
3	Reclamation Rural Water Supply Act of
4	2006 (43 U.S.C. 2401 et seq.), or a subse-
5	quent Act of Congress; and
6	(iv) a project carried out under title
7	XVI of the Reclamation Projects Author-
8	ization and Adjustment Act of 1992 (43
9	U.S.C. 390h et seq.).
10	(b) Substitution of Equivalent State Envi-
11	RONMENTAL REVIEWS.—
12	(1) In general.—For purposes of meeting the
13	requirements relating to making a detailed state-
14	ment under section 102(2)(C) of the National Envi-
15	ronmental Policy Act of 1969 (42 U.S.C.
16	4332(2)(C)), the Commissioner of the Bureau of
17	Reclamation may substitute a qualified State envi-
18	ronmental review of the reclamation project for the
19	detailed statement required for the reclamation
20	project under such section.
21	(2) Sense of congress.—It is the sense of
22	Congress that a State environmental review of a rec-
23	lamation project prepared in accordance with the
24	California Environmental Quality Act (California
25	Public Resources Code section 21000 et seq.) ex-

1	ceeds the requirements relating to making detailed
2	statements under section 102(2)(C) of the National
3	Environmental Policy Act of 1969 (42 U.S.C.
4	4332(2)(C)).
5	SEC. 3. AMENDMENTS TO THE INFRASTRUCTURE INVEST-
6	MENT AND JOBS ACT.
7	Title IX of Division D of the Infrastructure Invest-
8	ment and Jobs Act (Public Law 117–58) is amended by
9	adding at the end the following:
10	"SEC. 40911. VOLUNTARY WATER SYSTEM CONSOLIDATION
11	IN PUBLIC INTEREST.
12	"(a) Definitions.—In this section:
13	"(1) Privately operated water system.—
14	The term 'privately operated water system' means a
15	water system that is operated by a private entity.
16	"(2) Program.—The term 'Program' means
17	the grant program established under subsection (b).
18	"(3) Publicly operated water system.—
19	The term 'publicly operated water system' means a
20	water system that is—
21	"(A) not operated by a private entity; and
22	"(B) served by—
23	"(i) a Reclamation project, as defined
24	in section 8002 of the John D. Dingell, Jr.

1	Conservation, Management, and Recre-
2	ation Act (43 U.S.C. 2902); or
3	"(ii) a State-led storage project, as
4	defined in section 4007(a) of the WIIN
5	Act (43 U.S.C. 390b note).
6	"(4) RECLAMATION STATE.—The term 'Rec-
7	lamation State' has the meaning given such term in
8	section 4014 of the WIIN Act (43 U.S.C. 390b
9	note).
10	"(5) Water system.—The term water sys-
11	tem' means—
12	"(A) a public water system, as such term
13	is defined in section 1401 of the Safe Drinking
14	Water Act (42 U.S.C. 300f); or
15	"(B) a piped water system that provides
16	primarily agricultural service.
17	"(b) Establishment.—The Commissioner of the
18	Bureau of Reclamation shall establish a competitive grant
19	program to support projects that, on a voluntary basis:
20	"(1) convert 1 or more privately operated water
21	systems into a publicly operated water system; or
22	"(2) consolidate the physical infrastructure or
23	managerial and operational aspects of a publicly op-
24	erated water system with 1 or more other water sys-

1	tems to improve the efficiency of such water sys-
2	tems.
3	"(c) Eligible Entities.—The Commissioner may
4	award grants under the Program to a Reclamation State
5	or a political subdivision of a Reclamation State.
6	"(d) Exclusion.—The Secretary may not award a
7	grant under the Program to a private entity.".
8	SEC. 4. LIMIT ON CENTRAL VALLEY PROJECT RESTORA-
9	TION FUND ADMINISTRATIVE COSTS.
10	(a) In General.—Section 3407 of the Central Val-
11	ley Project Improvement Act (Public Law 102–575) is
12	amended—
13	(1) by amending subsection (f) to read as fol-
14	lows:
15	"(f) RESTORATION FUND FINANCIAL REPORTS.—
16	"(1) Transparency in expenditures.—The
17	Secretary shall make available on a public website a
18	report describing a detailed work plan for the ex-
19	penditure of all amounts deposited in the Restora-
20	tion Fund during the preceding fiscal year, includ-
21	ing—
22	"(A) a description of all receipts to, and
23	uses of, funds deposited in the Restoration
24	Fund and the Restoration Account during the
25	preceding fiscal year;

1	"(B) a projection of the expected receipts
2	to the Restoration Fund and Restoration Ac-
3	count for the following fiscal year; and
4	"(C) an analysis of the effectiveness of
5	each expenditure included in the report covering
6	the preceding fiscal year.
7	"(2) Public Participation for Planned ex-
8	PENDITURES.—
9	"(A) IN GENERAL.—For each fiscal year,
10	the Secretary shall make available on a public
11	website a proposed draft work plan for the fol-
12	lowing fiscal year regarding priorities and
13	spending levels for projects and programs to be
14	carried out under this title.
15	"(B) Public comment.—The draft work
16	plan under this paragraph shall be made avail-
17	able for public comment for a period not less
18	than 30 days."; and
19	(2) by adding at the end the following:
20	"(g) Limit on Administrative Costs.—The Sec-
21	retary may not expend more than 5 percent of the
22	amounts made available to the Secretary under this sec-
23	tion in a fiscal year on administrative costs to carry out
24	this section, including staffing.

1	"(h) President's Budget.—With respect to each
2	fiscal year, the Secretary shall include in the annual budg-
3	et submission under section 1105(a) of title 31, United
4	States Code, a dedicated budget line item identifying the
5	amount spent during the previous fiscal year for adminis-
6	trative costs to carry out this section and the number of
7	full-time equivalents by the Federal agency that performed
8	such administrative work.".
9	SEC. 5. AMENDMENTS TO THE WIIN ACT.
10	The WIIN Act (Public Law 114–322) is amended—
11	(1) in section 4007—
12	(A) in subsection (c)(4)—
13	(i) by striking "(B)" and inserting
14	"(C)";
15	(ii) by striking "but" after "anal-
16	yses;''; and
17	(iii) by inserting after subparagraph
18	(A) the following:
19	"(B) shall issue guidelines for feasibility
20	(or the equivalent) studies for State-led storage
21	projects that shall be deemed to provide suffi-
22	cient information for making the independent
23	determinations described in paragraph (2);
24	and"; and

1	(B) in subsection (h), by adding at the end
2	the following:
3	"(3) The Secretary of the Interior may rec-
4	ommend funding for a project pursuant to this sec-
5	tion only if the Secretary determines, on or before
6	the sunset date in subsection (i), such project is fea-
7	sible."; and
8	(2) in section $4011(f)(2)$ —
9	(A) by inserting "permitting," after "de-
10	signing"; and
11	(B) by inserting "mitigation" after "regu-
12	latory".
13	SEC. 6. USE OF REVENUE TO IMPROVE PROJECT SAFETY.
13 14	sec. 6. Use of revenue to improve project safety. (a) Definitions.—In this section:
14	(a) Definitions.—In this section:
14 15	(a) Definitions.—In this section:(1) Eligible Transfer.—The term "Eligible
14 15 16	(a) Definitions.—In this section:(1) Eligible Transfer" means the temporary and voluntary sell-
14 15 16 17	(a) Definitions.—In this section:(1) Eligible Transfer" means the temporary and voluntary selling, leasing, or exchanging of water or water rights
14 15 16 17	 (a) Definitions.—In this section: (1) Eligible Transfer. The term "Eligible Transfer" means the temporary and voluntary selling, leasing, or exchanging of water or water rights among individuals or agencies.
114 115 116 117 118	 (a) Definitions.—In this section: (1) Eligible Transfer.—The term "Eligible Transfer" means the temporary and voluntary selling, leasing, or exchanging of water or water rights among individuals or agencies. (2) Reclamation project.—The term "Rec-
14 15 16 17 18 19 20	 (a) Definitions.—In this section: (1) Eligible Transfer. The term "Eligible Transfer" means the temporary and voluntary selling, leasing, or exchanging of water or water rights among individuals or agencies. (2) Reclamation project. The term "Reclamation project" has the meaning given such term
14 15 16 17 18 19 20 21	 (a) Definitions.—In this section: (1) Eligible Transfer. The term "Eligible Transfer" means the temporary and voluntary selling, leasing, or exchanging of water or water rights among individuals or agencies. (2) Reclamation project. The term "Reclamation project" has the meaning given such term in section 8002 of the John D. Dingell, Jr. Con-
14 15 16 17 18 19 20 21	 (a) Definitions.—In this section: (1) Eligible Transfer.—The term "Eligible Transfer" means the temporary and voluntary selling, leasing, or exchanging of water or water rights among individuals or agencies. (2) Reclamation project.—The term "Reclamation project" has the meaning given such term in section 8002 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (43)

1	works, or other contract that entitles the holder to
2	water from a Reclamation project or facility and un-
3	dertakes an Eligible Transfer.
4	(b) Funds for Transferor.—Notwithstanding the
5	Act of February 25, 1920 (43 U.S.C. 521) or subsection
6	J of section 4 of chapter 4 of the Act of December 5,
7	1924 (43 U.S.C. 526), all moneys derived from an Eligible
8	Transfer that would otherwise be deposited in the Rec-
9	lamation Fund shall be remitted to the Transferor.
10	(c) USE OF FUNDS.—Funds remitted to a Transferor
11	under subsection (b)—
12	(1) shall be placed in a reserve account held by
13	the Transferor; and
14	(2) may only be used for—
15	(A) annual payments to the Bureau of
16	Reclamation on any repayment obligations in-
17	curred under the Reclamation Safety of Dams
18	Act of 1978 (43 U.S.C. 506 et seq.);
19	(B) annual payments on repayment obliga-
20	tions incurred under section 9603 of the Omni-
21	bus Public Land Management Act of 2009 (43
22	U.S.C. 510b); and
23	(C) ensuring that any Reclamation project
24	and structures appurtenant to such project sat-
25	isfy dam safety standards required under—

1	(i) Federal guidelines for dam owners,
2	regulators, and operators issued by the
3	Federal Emergency Management Agency
4	or the Interagency Committee on Dam
5	Safety; and
6	(ii) State law.
7	(d) Reporting.—A transferor to whom funds are re-
8	mitted under this section shall report to the Commissioner
9	of the Bureau of Reclamation all uses of such funds.
10	(e) Effect of Section.—Nothing in this section—
11	(1) affects any other authority of the Secretary
12	to use moneys derived from revenues from a Rec-
13	lamation project; or
14	(2) creates, impairs, alters, or supersedes a
15	State water right.
16	(f) COMPLIANCE.—Each Eligible Transfer shall com-
17	ply with all applicable—
18	(1) State water laws;
19	(2) Federal laws and policies; and
20	(3) interstate water compacts.
21	(g) Reclamation Laws.—This section shall supple-
22	ment the Act of June 17, 1902 (32 Stat. 388; ch. 1093),
23	and Acts supplementary thereto and amendatory thereof.

1 SEC. 7. DELTA RESEARCH STATION.

- 2 The Secretary of the Interior, acting through the Di-
- 3 rector of the United States Fish and Wildlife Service, shall
- 4 seek to enter into an agreement with the State of Cali-
- 5 fornia to jointly construct and operate the Delta Research
- 6 Station (including the Fish Technology Center and Rio
- 7 Vista Estuarine Research Station in Solano County, Cali-
- 8 fornia) in the Sacramento-San Joaquin Delta, California,
- 9 described in the Final Environmental Impact Report/Envi-
- 10 ronmental Impact Statement entitled "Delta Research
- 11 Station Project: Estuarine Research Station and Fish
- 12 Technology Center" published by the United States Fish
- 13 and Wildlife Service in February 2017.
- 14 SEC. 8. NEW FISH HATCHERY ON SACRAMENTO RIVER
- 15 MAINSTEM.
- 16 The Commissioner of the Bureau of Reclamation is
- 17 authorized to use such sums as are necessary from the
- 18 Central Valley Project Restoration Fund monies contrib-
- 19 uted by Sacramento River Settlement Contractors and
- 20 Central Valley Project Water Service Contractors that di-
- 21 vert water directly from the mainstem of the Sacramento
- 22 River and are located within the Sacramento River Divi-
- 23 sion of the Central Valley Project to build, operate, and
- 24 maintain a fish hatchery on Federal land at the Red Bluff
- 25 Diversion Dam in Tehama County, California, or on other
- 26 Federal land located on the mainstem of the Sacramento

- 1 River in Red Bluff, California, for Chinook salmon
- 2 (Oncorhynchus tshawytscha) and other anadromous fish
- 3 native to the Sacramento River listed as an endangered
- 4 species or a threatened species pursuant to section 4 of
- 5 the Endangered Species Act (16 U.S.C. 1533), if the Com-
- 6 missioner determines such action aligns with the purposes
- 7 of the Central Valley Project Improvement Act (title
- 8 XXXIV of Public Law 102–575).

9 SEC. 9. TECHNICAL AMENDMENTS.

- 10 Section 3405(a)(1) of the Central Valley Project Im-
- 11 provement Act (title XXXIV of Public Law 102–575) is
- 12 amended—
- 13 (1) by striking "to Central" and inserting "of
- 14 Central"; and
- 15 (2) in subparagraph (A), by striking "to com-
- bination" and inserting "or combination".

17 SEC. 10. REPORT TO CONGRESS.

- Not later than 1 year after the date of enactment
- 19 of this Act, the Commissioner of the Bureau of Reclama-
- 20 tion, in consultation with the Administrator of the Envi-
- 21 ronmental Protection Agency, shall submit to Congress a
- 22 report on the implementation of—
- 23 (1) section 4301 of America's Water Infrastruc-
- 24 ture Act of 2018 (33 U.S.C. 3909 note); and

1	(2) any agreement entered into under section
2	5030(g) of the Water Infrastructure Finance and
3	Innovation Act of 2014 (33 U.S.C. 3909(g)) pursu-
4	ant to such section 4301.



To:	MWDOC Workshop
From:	Syrus Devers, Best Best & Krieger
Date:	April 5th, 2023
Re:	State Government Affairs Monthly Report

The Legislature

The brevity of this report does not reflect the activity level in Sacramento. The last 30 days have been almost exclusively devoted to studying, debating, and writing about legislation that will be heard in policy committees in the remaining weeks of April. (The Legislature will be in recess the first week of April.) The few words it takes to describe what advocates in Sacramento are doing bears no relationship to the hours spent doing it. Here are the bills that are talked about the most:

AB 460 (Bauer-Kahan), AB 1337 (Wicks), and SB 389 (Allen): Last month's report discussed AB 460, which would give broad new powers to the SWRCB over riparian and pre-1914 water rights. What has emerged since then is the awareness of the combined impact of these bills as a group. Like AB 460, AB 1337 is a vast expansion of authority over all types of water rights by the SWRCB, but AB 1337 is the most extreme bill in the group. The bill would essentially turn SWRCB's emergency powers into their ordinary powers to be used at will. The effect, which may be intentional, could be to make the other bills look more reasonable by comparison. SB 389, if it were considered as a standalone bill, might have been the major focus of Sacramento advocates, but in light of the other bills it has received only a fraction of the attention it likely deserves. The bill would give the SWRCB the power to challenge a riparian or pre-1914 water right, then put the burden of substantiating the right on the holder. Basically, "I say you're guilty, now prove me wrong." If enacted, it would give SWRCB nearly unchecked power to determine the extent, or quantity, of a water right not created by a permit.

Both ACWA and CMUA are taking positions of hard "oppose" on all three bills.

SB 366 (Caballero): This bill is sponsored by CMUA and is a result of the Solve The Water Crisis effort that MWDOC has supported. The bill began as a spot bill and was amended to include substantive language on March 22nd. As a result, the bill has yet to be assigned to committee for a hearing, but will likely be heard on April 25th. The first round of amendments, with many more to follow, addressed putting real numbers down to meet the state's future water demands. At this time, the bill calls for an interim water supply target of 10 million acre feet by 2040, and 15 million by 2050. To give some context for these numbers, according to the Water Education Foundation, California stores about 35



million acre feet in its 3,000 reservoirs. The proposed Sites Reservoir would store an additional 1.5 million acre feet. Reaching the targets in SB 366 will rely heavily on developing opportunities to store more water underground. The bill also requires the administration to implement a long-term financing plan, but there is no intent to leave it entirely to the discretion of the administration. Future amendments will develop a financing plan as well as other critical issues that are not yet mentioned in the text of the current bill.

<u>Legislative Process</u>: The first major deadline on the horizon is Friday, April 28th. Any bill with fiscal impacts, which is 90% of all bills, must pass out of all assigned policy committees in the "house of origin," which is the house in which the bill was introduced. Bills without a fiscal impact have until May 5th to be heard in committee.

Finally, MWDOC staff has now met with the offices of nearly every member of the OC Delegation and the new members of the relevant policy committees. In the coming weeks and months we are requesting meetings to introduce (or reacquaint) the MWDOC Board to legislators.

The Administration

Water managers at the Department of Water Resources are haunted by the ghost of 2022. As record rain and snow continue to pound California, water managers are still worried about a repeat of 2022 when two months of near record rain totals were followed by the driest three months ever recorded. Nonetheless, reservoir levels behind the state's largest dams are reaching levels that are forcing releases of water for flood management requirements and topping spillways. In response, the Newsom administration is angering environmentalists by suspending water quality requirements in the Bay Delta in order to move as much water as possible into storage, including groundwater storage in the Central Valley. Environmentalists are upset that, for the first time, water quality regulations were suspended outside of an extreme drought emergency.

ACKERMAN CONSULTING

Legal and Regulatory

April 5, 2023

- 1. **Biochar Future:** An agricultural practice that dates back more than one thousand years may be making a comeback. Biochar, whose real name is pyrolysis, burns organic waste creating a charcoal type substance. It was originally used to enrich the soil, but it also extracts carbon from the air and soaks up nutrients from storm water runoff. It has referred to as a biological carbon battery. The effectiveness of the process has always been an unknown which is why Congress is ready to approve a study to determine it. The biochar pellets are made from organic materials such as animal manure, crop residue and waste and even food waste. It can also be used in treating sewage and removing drugs from soil.
- 2. **Lake Shasta Update:** A recent study of Lake Shasta has shown some interesting facts. The level of the Lake goes up and down over time and is considered normal operation. It usually fills up every five years or so. It has had historical lows frequently, with the lowest recorded in 1976 (238 feet down). The study concluded that the Lakes history is because of Mother Nature and not climate change.
- 3. **More Reservoirs:** A recent article in Stateline reinforces the need for more reservoirs in California. The author recognizes the environmental groups push for more conservation and their opposition to new storage projects. He also quotes PPIC and other local water officials involved in Solve The Water Crisis coalition strong opinion that more storage is needed and justified, both above ground and under. As we have a history of large water events, we need to be prepared to take advantage of them. Let the drumbeat continue>>
- 4. **Petaluma Goes Solar:** The City of Petaluma recently approved a project to place solar panels on top of a 17-acre pond used at the Ellis Creek Water Recycling Facility. They will cover about 2/3 of the pond and will generate an average of \$600,000 savings in electricity per year. The plants annual electricity expense is almost \$2 million. One negative is the potential for increased mosquito populations because of the solar array. Mitigation measures are being considered.
- 5. **More Storage:** A UC Davis report emphasizes the need for more storage particularly considering the current rain and snow events. It is also critical of the bureaucratic morass in California which makes timely progress almost impossible. It mentions the recent water bond measure passed and the delay in approving Sites Reservoir. The problems with the Colorado River Basin should make it noticeably clear that action is needed now. The study also mentions the agricultural loss due to lack of water exceeding \$1.2 billion last year. We also need to focus on groundwater recharge and state infrastructure.
- 6. **Toilet Paper and PFAS:** A study published in Environmental Science & Technology Letters points a finger at toilet paper in contributing to the PFAS problem. The study collected samples of toilet paper and sewage sludge in North, South and Central America, Africa, and Western Europe. PFAS compounds, in particular 6:2 diPAP, are

used is the manufacturing of some toilet paper and in recycled toilet paper (not sure what that is). The level found was extremely low, in the parts per billion. The amount of 6:2 diPAP found in the US and Canada amounted to about 4% (35% in Sweden, 89% France). Although, US and Canada use more toilet paper than other parts of the world, our percentage was very low due to the PFAS contributed by cosmetics, textiles, food packaging and other sources.

- 7. **State Groundwater Efforts:** The Department of Water Resources (DWR) is commencing LandFlex, a new plan to pay farmers to not grow crops. The budget will be about \$25 million. All these programs are targeted to San Joaquin Valley groundwater agencies. More than 1,000 wells have gone dry in 2022 in the Valley. The goal of the plan is to save domestic wells from impact of surrounding farm use. The money is intended to be used this year. Many farmers are saying that this is a little late since decisions on land use have already been made. Changes made in mid-course can be more costly and less effective. Plan guidelines state that the State will pay \$450 for every acre foot of water saved. The program has varying amounts depending on the type of crop being reduced. Samples are \$250 row crops, \$2000 dairy uses, \$2800 orchard and vineyards. Other similar programs the State has offered are receiving many more applications than funds available.
- 8. **Feds Groundwater Efforts:** The Federal Government is presently offering help to the Central Valley to replenish groundwater. UC Merced reports that almost 700,000 acres in the Central Valley have been fallowed in the last three years. While the State and local agencies have been active in groundwater recharge, the Feds have just begun a test program. In select areas, the US Department of Agriculture is providing incentives to develop groundwater recharge projects. On such project is in Madera County and is a 20-acre recharge basin. The Feds are paying 85% of the cost and Madera Irrigation District is covering the rest. Contamination of the aquifers is a concern along with how cost effective these efforts will be. Will the increase in groundwater levels justify the total cost?
- 9. **Improved Bacteria ID:** Stanford University is using old and new techniques to identify bacteria in the water flow. Finding and analyzing bacteria is being done now, but the time can be from hours to a month to get good results. This new process using ink-jet printers (old) and nanoparticles and artificial intelligence (new) reduces that time to minutes and is much more accurate. The ink-jet printer is modified to use blood or wastewater instead of ink. After the fluid is spread, it is hit with a laser. The reflected light is then analyzed, and the bacteria identified. The process was initially designed to examine blood but the conversion to other fluids was an easy next step. This is being currently studied for commercialization.
- 10. Water Far Away: Astronomers using one of the largest telescopes in the world, ALMA, in Chile found water a long way off. A new star, called V883 Orionis, approximately 1,300 light years away, is ringed by a mixture or gas and dust which includes water vapor. These cloud-like formations are usually byproducts of the star's formation. They eventually come together to form comets, planets, and other bodies over millions of years. These bodies which contain the basics of water travel throughout the universe and are responsible for spreading water to Earth and probably other planets.
- 11. Las Vegas Water Limits: Nevada State legislators are considering severe limitations on residential use of water. Las Vegas is one of the driest urban areas in the US. The State is considering giving the water agency, Southern

Nevada Water Authority, the power to limit residential use further than most anything we have seen. They have already banned most grass, limited swimming pool size and pushed for more recycled water usage. The current measure would limit the amount of water per household. It would be aimed at the higher user homes, the top 10% of water folks. It would eliminate septic tanks which are still common is some areas. The limit would be 160,000 gallons per year. The current agency average is about 130,00 per year. Implementation and enforcement measures have not been discussed yet. Vegas is 90% reliant on Colorado River water. As you might have guessed, this has much opposition and it quite controversial.

12. Climate Change?: A recent San Francisco Chronicle article discussed whether California is warming or cooling. Their conclusion was that climate changes! We have just been exposed to record rain and snow and cold temperatures. In the years preceding, we have gone through record drought conditions and a warming trend. One statement from the Lawrence Berkeley National Laboratory scientist was "Weather does not equal climate." One day in February in the Bay Area, a temperature of 39 degrees was recorded. The previous low in that area was 40 degrees in 1891. Weather systems tend to do their own thing. The big question is the impact of warming trends on the jet stream, where most weather events start. Scientists disagree with this correlation. While scientists do agree that changing conditions can create more extreme weather events, the magnitude of our recent storms goes way beyond what might be expected. Thus, the difference of opinion of climate change theories and the impact that man causes on that climate change.



April 5, 2023

TO: MWDOC Board of Directors

FROM: Peter Whittingham

SUBJECT: March, 2023 Report

This month has been an extremely busy period for the District and for every Orange County water agency as a result of the tremendous amount of rain experienced throughout our region. Some of the more notable developments and issues of March are as follows:

Monday, March 27: Officials at Camp Pendleton sent a public notice to thousands of service members and civilians who live and work on the base's north end, alerting them that recent testing revealed their drinking water contained a elevated levels of PFAS.

Also that day, Metropolitan Water District began to refill the 810,000-acre-foot Diamond Valley Lake reservoir for the first time in many years. The 4.5-mile-long reservoir holds twice as much water as all of the region's other surface reservoirs combined. Met officials anticipate that the refill of the lake will be completed later this year.

Friday, March 24: Governor Gavin Newsom announced that he will roll back some of the state's most severe drought restrictions and dramatically increase water supplies for agencies serving most of California. Among the rescinded items was the Governor's 2021 call for a voluntary 15% reduction in water use and a March 2022 order requiring urban water suppliers to activate Level 2 of their water shortage contingency plans, which indicates a shortage of 20% and prompts increased conservation actions.

<u>Thursday, March 23</u>: The U.S. Drought Monitor released its latest update on the status of California's conditions, showing that much of the state and all of Orange County had zero intensity. The chart may be viewed here - https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA

Wednesday, March 15: A greenway separating two rows of condominiums in the Coyote Village housing complex on West Imperial Highway in La Habra gave way, creating a large sinkhole just yards from another gaping hole that occurred in 2019 and has yet to be repaired. Ownership of the storm channel has not been determined and the Coyote Village

Homeowners Association filed suit against the County of Orange, the Orange County Flood Control District, and the City of La Habra in 2020.

Also on March 15, approximately 4,000 gallons of sewage spilled into the ocean via San Juan Creek; a portion of Doheny State Beach was reopened March 25.

<u>Tuesday, March 14</u>: The Orange County Board of Supervisors unanimously approved a request by 5th District Supervisor Katrina Foley to immediately proclaim a Local State of Emergency in the County to support storm response as a result of the collapse of several hillsides in Newport Beach, Seal Beach and San Clemente. Following the County's local declaration of emergency, Governor Newsom expanded the state of emergency to include Orange County.

Wednesday, March 8: Nearly two dozen members of the public, including myself and representatives of Orange County, Irvine Ranch, Santa Margarita, Moulton Niguel, Mesa, and Trabuco Canyon Water Districts, attended the Orange County Local Agency Formation Commission (OC LAFCO) meeting. Several Commissioners recognized and commended LAFCO CEO Carolyn Emery for her presence and comments before a group of general managers, including Harvey De La Torre and Mike Marcus, regarding the potential Focused Municipal Service Review of MWDOC-OCWD consolidation.

<u>Sunday, March 5</u>: A number of Laguna Beach residents were forced to evacuate their homes after a broken water main opened up a sinkhole and caused a gas leak. Crews from South Coast Water District were joined by Laguna Beach fire and police personnel to respond to the situation and effect repairs.

2

MWDOC Workshop

Bill Matrix – April, 2023

A. Priority Support/Oppose

AB 460 (Bauer-Kahan D) State Water Resources Control Board: interim relief.

Status: 2/17/2023-Referred to Coms. on W., P., & W. and JUD.

Calendar: 4/18/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: The State Water Resources Control Board and the California regional water quality control boards are required to set forth water quality objectives in state and regional water quality control plans. Current law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available upon appropriation by the Legislature for the administration of the board's water rights program. Current law requires that the owner of any dam allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam, as specified. This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related provisions of law. The bill would provide that a person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty in an amount not to exceed the sum of \$10,000 for each day in which a violation occurs and \$5,000 for each acre-foot of water diverted in violation of the interim relief order. The bill would require these funds to be deposited in the Water Rights Fund.

Position Priority
Out for Analysis A. Priority
Support/Oppose

AB 838 (Connolly D) California Water Affordability and Infrastructure Transparency Act of 2023.

Status: 3/22/2023-Re-referred to Com. on E.S. & T.M.

Summary: The California Safe Drinking Water Act requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Current law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The act prohibits a person from operating a public water system unless the person first submits an application to the state board and receives a permit to operate the system, as specified. The act requires a public water system to submit a technical report to the state board as a part of the permit application or when otherwise required by the state board, as specified, and to submit the report in the form and format and at intervals specified by the state board. This bill would require, beginning January 1, 2025, and thereafter at intervals determined by the state board, public water systems to provide specified information and data related to customer water bills and efforts to replace aging infrastructure to the state board.

Position Priority
Out for Analysis A. Priority
Support/Oppose

AB 1337 (Wicks D) State Water Resources Control Board: water shortage enforcement.

Status: 3/2/2023-Referred to Coms. on W., P., & W. and JUD.

Calendar: 4/18/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

Summary: Would authorize the State Water Resources Control Board to adopt regulations for various water conservation purposes, including, but not limited to, to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and to implement these regulations through orders curtailing the diversion or use of water under any claim of right. The bill would require the board to provide notice and an opportunity to be heard before issuing an order, except where an opportunity to be heard before the issuance of an order would be impractical given the likelihood of harm to the purposes of the various water conservation regulations. The bill would provide that a person or entity may be civilly liable for a violation of any regulation or order issued by the board pursuant to these provisions in an amount not to exceed \$1,000 for each day in which the violation has occurred and \$2,500 for each acre-foot of water diverted or used in violation of the applicable requirement. The bill would authorize the imposition of this civil liability by the superior court, as specified, or administratively by the board. The bill would provide that a regulation or order issued by the board pursuant to these provisions, or by emergency regulation, is exempt from the alifornia Environmental Quality Act (CEQA).

Position Priority
Out for Analysis A. Priority
Support/Oppose

AB 1572 (Friedman D) Potable water: nonfunctional turf.

Status: 3/9/2023-Referred to Com. on W., P., & W.

Calendar: 4/18/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: (1)Existing law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use of water. This bill would make legislative findings and declarations concerning water use, including that the use of potable water to irrigate nonfunctional turf is wasteful and incompatible with state policy relating to climate change, water conservation, and reduced reliance on the Sacramento-San Joaquin Delta ecosystem. The bill would direct all appropriate state agencies to encourage and support the elimination of irrigation of nonfunctional turf with potable water. This bill contains other related provisions and other existing laws.

Position Priority
Out for Analysis A. Priority
Support/Oppose

SB 23 (Caballero D) Water supply and flood risk reduction projects: expedited permitting.

Status: 3/23/2023-Set for hearing April 11.

Calendar: 4/11/2023 9 a.m. - 1021 O Street, Room 2100 SENATE NATURAL RESOURCES AND WATER, MIN,

DAVE, Chair

Summary: Current law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, except under specified conditions, including requiring the entity to send written notification to the Department of Fish and Wildlife regarding the activity in the manner prescribed by the department. This bill would require a project proponent, if already required to submit a notification to the department, to complete and submit environmental documentation to the department for the activity in the notification.

Position Priority
Support A. Priority
Support/Oppose

Notes 1: Support position approved on 3/1/2023

SB 48 (**Becker** D) Water and Energy Savings Act.

Status: 3/16/2023-March 21 hearing postponed by committee.

Summary: Current law requires each utility to maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 complete calendar months, and to deliver or otherwise provide that aggregated energy usage data for each covered building, as defined, to the owner, as specified. This bill would expand those requirements, beginning January 1, 2025, to include each utility that provides water service and its water usage data.

Position Priority
Out for Analysis A. Priority
Support/Oppose

SB 366 (Caballero D) The California Water Plan: long-term supply targets.

Status: 3/22/2023-From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Summary: Current law requires the Department of Water Resources to update every 5 years the plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state, which is known as the California Water Plan. Current law requires the department to include a discussion of various strategies in the plan update, including, but not limited to, strategies relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, water transfers, and alternative pricing policies that may be pursued in order to meet the future needs of the state. Current law requires the department to establish an advisory committee to assist the department in updating the plan. This bill would require the department to instead establish a stakeholder advisory committee, to expand the membership of the committee to include tribes and environmental justice interests, to prohibit a member of the committee from serving longer than the development of 2 updates, and to require the committee to meet a minimum of 4 times annually. The bill would require the department, in coordination with the California Water Commission, the State Water Resources Control Board, other state and federal agencies as appropriate, and the stakeholder advisory committee to develop a comprehensive plan for addressing the state's water needs and meeting specified water supply targets established by the bill for purposes of "The California Water Plan."

Position Priority
Out for Analysis A. Priority
Support/Oppose

SB 389 (Allen D) State Water Resources Control Board: determination of water right.

Status: 2/22/2023-Referred to Com. on N.R. & W.

Summary: Current law provides that it is the intent of the Legislature that the state take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water. This bill would authorize the State Water Resources Control Board to investigate the diversion and use of water from a stream system to determine whether the diversion and use are based upon appropriation, riparian right, or other basis of right, as specified.

Position Priority
Out for Analysis A. Priority
Support/Oppose

SB 687 (Eggman D) Water Quality Control Plan: Delta Conveyance Project.

Status: 3/20/2023-From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Summary: Would require the State Water Resources Control Board to adopt a final update of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, as provided, before the board may consider a change in point diversion or any other water rights permit or order associated with the Delta Conveyance Project. The bill would also, if, after completing the update of the plan and in compliance with existing law, the board approves a change in point of diversion or any other water rights permit or order associated with the Delta Conveyance Project, prohibit the operation of the Delta Conveyance Project unless and until the updated plan is fully implemented. The bill would specify that these provisions do not constitute an authorization for or approval of funding for the Delta Conveyance or any other isolated Delta conveyance project and do not reduce any statutory or other regulatory conditions or permit requirements for Delta Conveyance projects.

Position Priority
Out for Analysis A. Priority
Support/Oppose

B. Watch

(March 14). Re-referred to Com. on APPR.

Summary: Current law establishes the Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program in the Department of Water Resources. Current law requires the department, upon an appropriation for purposes of the program, to research climate forecasting and the causes and impacts that climate change has on atmospheric rivers, to operate reservoirs in a manner that improves flood protection, and to reoperate flood control and water storage facilities to capture water generated by atmospheric rivers. This bill would rename that program the Atmospheric Rivers Research and Forecast Improvement Program: Enabling Climate Adaptation Through Forecast-Informed Reservoir Operations and Hazard Resiliency (AR/FIRO) Program. The bill would require the department to research, develop, and implement new observations, prediction models, novel forecasting methods, and tailored decision support systems to improve predictions of atmospheric rivers and their impacts on water supply, flooding, post-wildfire debris flows, and environmental conditions.

Position Priority
Watch B. Watch

AB 62 (Mathis R) Statewide water storage: expansion.

Status: 2/28/2023-Re-referred to Com. on W., P., & W.

Calendar: 4/18/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: Would establish a statewide goal to increase above- and below-ground water storage capacity by a total of 3,700,000 acre-feet by the year 2030 and a total of 4,000,000 acre-feet by the year 2040. The bill would require the State Water Resources Control Board, in consultation with the Department of Water Resources, to design and implement measures to increase statewide water storage to achieve the statewide goal. The bill would require the state board, beginning July 1, 2027, and on or before July 1 every 2 years thereafter until January 1, 2043, in consultation with the department, to prepare and submit a report to the Legislature on the progress made in designing and implementing measures to achieve the statewide goal.

Position Priority
Watch B. Watch

AB 66 (Mathis R) Natural Resources Agency: water storage projects: permit approval.

Status: 3/28/2023-From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 15. Noes 0.)

(March 28).

Calendar: 3/30/2023 #19 ASSEMBLY SECOND READING FILE -- ASSEMBLY BILLS

Summary: Would require the Natural Resources Agency, and each department, board, conservancy, and commission within the agency, to approve the necessary permits for specified projects that meet certain employment conditions within 180 days from receiving a permit application, and would deem those permits approved if approval does not occur within this time period.

Position Priority B. Watch

AB 249 (Holden D) Water: schoolsites: lead testing: conservation.

Status: 3/21/2023-Re-referred to Com. on ED.

Calendar: 3/29/2023 1:30 p.m. - 1021 O Street, Room 1100 ASSEMBLY EDUCATION, MURATSUCHI, AL,

Chair

Summary: Would require a community water system that serves a schoolsite, as defined, to test for lead in the potable water system outlets of the schoolsite before January 1, 2027, except for potable water system outlets in buildings that were either constructed after January 1, 2010, or modernized after January 1, 2010, and all faucets and other end point devices used for providing potable water were replaced as part of the modernization. The bill would require the community water system to report its findings to the applicable school or local educational agency and to the state board. The bill would require the local educational agency or school, if the lead level exceeds a specified level at a schoolsite, to notify the parents and guardians of the pupils who attend the schoolsite, take immediate steps to make inoperable and shut down from use all fountains and faucets where the excess lead levels may exist, and work with the schoolsites under its jurisdiction to ensure that a potable source of drinking water is provided for pupils, as specified. The bill would require a community water system to prepare a sampling plan for each schoolsite where lead sampling is required under these provisions. The bill would require the state board to make the results of schoolsite lead sampling publicly available by posting the results on its internet website.

Position Priority
Watch B. Watch

AB 277 (Rodriguez D) Extreme Weather Forecast and Threat Intelligence Integration Center.

Status: 3/27/2023-In committee: Hearing postponed by committee.

Calendar: 4/18/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: Current law establishes the Department of Forestry and Fire Protection (CAL-FIRE) and establishes various programs for the prevention and reduction of wildfires. Current law requires Cal OES and CAL-FIRE to jointly establish and lead the Wildfire Forecast and Threat Intelligence Integration Center, and sets forth the functions and duties of the center, including serving as the state's integrated central organizing hub for wildfire forecasting. Current law establishes the Department of Water Resources within the Natural Resources Agency and sets forth its powers and duties relating to water resources. This bill would rename the center as the Wildfire and Extreme Weather Forecast and Threat Intelligence Integration Center and would require the Department of Water Resources, along with Cal OES and CAL-FIRE, to lead the center. The bill would expand the center's mission to include analyzing atmospheric river data and other threat indicators that could lead to catastrophic floods and to reduce the severity of flood incidents that could endanger the safety of persons, property, and the environment by developing and sharing intelligence products related to atmospheric river weather conditions and potential flood conditions for government decisionmakers. The bill would require the center to serve as the state's integrated central organizing hub for atmospheric river forecasting and coordinate extreme weather intelligence and data sharing among federal, state, and local agencies, among others, as specified.

Position Priority
Watch B. Watch

AB 305 (Villapudua D) California Flood Protection Bond Act of 2024.

Status: 3/27/2023-Re-referred to Com. on W., P., & W.

Summary: Would enact the California Flood Protection Bond Act of 2024 which, if approved by the voters, would authorize the issuance of bonds in the amount of \$3,750,000,000 pursuant to the State General Obligation Bond Law for flood protection projects, as specified. The bill would provide for the submission of these provisions to the voters at the November 5, 2024, statewide general election.

Position Priority
Watch B. Watch

AB 338 (Aguiar-Curry D) Public works: definition.

Status: 3/22/2023-From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (March 22). Re-referred to Com. on APPR.

Summary: Current law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law defines the term "public works" for purposes of requirements regarding the payment of prevailing wages to include construction, alteration, demolition, installation, or repair work done under contract and paid for using public funds, except as specified. Current law makes a willful violation of laws relating to the payment of prevailing wages on public works a misdemeanor. This bill would, commencing January 1, 2025, expand the definition of "public works" to include fuel reduction work done under contract and paid for in whole or in part out of public funds performed as part of a fire mitigation project, as specified. The bill would limit those provisions to work that falls within an apprenticable occupation in the building and construction trades for which an apprenticeship program has been approved and to contracts in excess of \$100,000. The bill would delay the application of those provisions until January 1, 2026, for nonprofits.

Position Priority
Watch B. Watch

AB 340 (Fong, Vince R) California Environmental Quality Act: grounds for noncompliance.

Status: 3/27/2023-In committee: Set, first hearing. Hearing canceled at the request of author.

Summary: The California Environmental Quality Act (CEQA) prohibits an action or proceeding from being brought in a court to challenge the approval of a project by a public agency unless the alleged grounds for noncompliance are presented to the public agency orally or in writing by a person during the public comment period provided by CEQA or before the close of the public hearing on the project before the issuance of the notice of determination. This bill would require the alleged grounds for noncompliance with CEQA presented to the public agency in writing be presented at least 10 days before the public hearing on the project before the issuance of the notice of determination. The bill would prohibit the inclusion of written comments presented to the public agency after that time period in the record of proceedings and would prohibit those documents from serving as basis on which an action or proceeding may be brought.

Position Priority
Watch B. Watch

AB 557 (Hart D) Open meetings: local agencies: teleconferences.

Status: 2/17/2023-Referred to Com. on L. GOV.

Summary: Current law, until January 1, 2024, authorizes a local agency to use teleconferencing without complying with specified teleconferencing requirements in specified circumstances when a declared state of emergency is in effect, or in other situations related to public health, as specified. If there is a continuing state of emergency, or if state or local officials have imposed or recommended measures to promote social distancing, existing law requires a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures. Current law requires a legislative body that holds a teleconferenced meeting under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option. Current law prohibits a legislative body that holds a teleconferenced meeting under these abbreviated teleconferencing procedures from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. This bill would extend the above-described abbreviated teleconferencing provisions when a declared state of emergency is in effect, or in other situations related to public health, as specified, indefinitely.

Position Priority
Watch B. Watch

AB 676 (Bennett D) Water: general state policy.

Status: 3/27/2023-In committee: Hearing postponed by committee.

Calendar: 5/2/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: Current law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation. This bill would provide specific examples of the use of water for domestic purposes, including, but not limited to, sustenance of human beings and household conveniences. The bill would provide that all water rights remain subject to specified laws.

Position Priority
Watch B. Watch

AB 1205 (Bauer-Kahan D) Water rights: sale, transfer, or lease: agricultural lands.

Status: 3/27/2023-Re-referred to Com. on W., P., & W.

Calendar: 5/2/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: Would declare that the sale, transfer, or lease of an interest in any water right for profit, on or below agricultural lands within the state by an investment fund, shall not be considered a reasonable or beneficial use of water.

Position Priority
Watch B. Watch

AB 1637 (Irwin D) Local government: internet websites and email addresses.

Status: 3/20/2023-Re-referred to Com. on L. GOV.

Summary: The California Public Records Act requires a local agency to make public records available for inspection and allows a local agency to comply by posting the record on its internet website and directing a member of the public to the internet website, as specified. This bill, no later than January 1, 2025, would require a local agency, as defined, that maintains an internet website for use by the public to ensure that the internet website utilizes a ".gov" top-level domain or a ".ca.gov" second-level domain, and would require a local agency that maintains an internet website that is noncompliant with that requirement to redirect that internet website to a domain name that does utilize a ".gov" or ".ca.gov" domain. This bill, no later than January 1, 2025, would also require a local agency that maintains public email addresses to ensure that each email address provided to its employees utilizes a ".gov" domain name or a ".ca.gov" domain name. By adding to the duties of local officials, the bill would impose a state-mandated local program.

Position Priority
Watch B. Watch

ACA 2 (Alanis R) Public resources: Water and Wildfire Resiliency Act of 2023.

Status: 12/6/2022-From printer. May be heard in committee January 5.

Summary: Would establish the Water and Wildfire Resiliency Fund within the State Treasury, and would require the Treasurer to annually transfer an amount equal to 3% of all state revenues that may be appropriated as described from the General Fund to the Water and Wildfire Resiliency Fund. The measure would require the moneys in the fund to be appropriated by the Legislature and would require that 50% of the moneys in the fund be used for water projects, as specified, and that the other 50% of the moneys in the fund be used for forest maintenance and health projects, as specified.

Position Priority
Out for Analysis B. Watch

SB 3 (**Dodd D**) Discontinuation of residential water service: community water system.

Status: 3/28/2023-Set for hearing April 10.

Calendar: 4/10/2023 10 a.m. - 1021 O Street, Room 2200 SENATE APPROPRIATIONS, PORTANTINO,

ANTHONY, Chair

Summary: The Water Shutoff Protection Act prohibits an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, from discontinuing residential service for nonpayment, as specified, and requires specified procedures before it can discontinue residential service for nonpayment. Current law defines a community water system as a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. Current law requires an urban and community water system to have a written policy on discontinuation of residential service for nonpayment available in English, the specified languages in the Civil Code, and any other language spoken by at least 10% of the people residing in its service area. This bill would expand the scope of the Water Shutoff Protection Act by requiring that it instead apply to a community water system, defined to have the same meaning as existing law. The bill would require a community water system that supplies water to 200 service connections or fewer to comply with the act's provisions on and after August 1, 2024.

Position Priority
Out for Analysis B. Watch

SB 57 (Gonzalez D) Utilities: disconnection of residential service.

Status: 3/22/2023-Re-referred to Coms. on E., U. & C. and JUD.

Summary: Would require an electrical corporation, local publicly owned electric utility, gas corporation, local publicly owned gas utility, water corporation, or local agency that owns a public water system to postpone the disconnection of a customer's residential service for nonpayment of a delinquent account when the temperature will be 32 degrees Fahrenheit or cooler, or 95 degrees Fahrenheit or warmer, within the utility's service area during the 24 hours after that service disconnection would occur, as specified. The bill would require each of those utilities to notify its residential ratepayers of that requirement and to create an online reporting system available through its internet website, if it has one, that enables its residential ratepayers to report when their utility service has been disconnected in violation of that requirement, as specified. The bill would require the PUC to establish a citation program to impose a penalty on an electrical corporation or gas corporation that violates that requirement, and require each local publicly owned electric utility and local publicly owned gas utility to annually report to the State Energy Resources Conservation and Development Commission the number of residential service connections it disconnected for nonpayment of a delinquent account. The bill would authorize the State Water Resources Control Board to enforce the requirement that a water corporation and local agency that owns a public water system postpone a disconnection of a customer's residential service, as specified.

Position Priority
Watch B. Watch

SB 66 (Hurtado D) Water Quality, Supply, and Infrastructure Improvement Act of 2014: Drinking Water Capital Reserve Fund: administration.

Status: 3/21/2023-From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Summary: The Water Quality, Supply, and Infrastructure Improvement Act of 2014 bond act provides that the sum of \$260,000,000 is to be available for grants and loans for public water system infrastructure improvements and related actions to meet safe drinking water standards, ensure affordable drinking water, or both, as specified. Current law requires the State Water Resources Control Board to deposit up to \$2,500,000 of the \$260,000,000 into the Drinking Water Capital Reserve Fund, to be available upon appropriation by the Legislature. Current law requires the state board to administer the Drinking Water Capital Reserve Fund for the purpose of serving as matching funds for disadvantaged communities and requires the state board to develop criteria to implement this provision. This bill would require the state board to provide an analysis of the criteria to implement that provision to the Senate Committee on Natural Resources Page 39 of 185

and Water and Assembly Committee on Water, Parks, and Wildlife on January 1, 2025, and every 2 years thereafter.

Position Priority
Watch B. Watch

SB 69 (Cortese D) California Environmental Quality Act: judicial and administrative proceedings: limitations.

Status: 3/21/2023-Set for hearing April 11.

Calendar: 4/11/2023 1:30 p.m. - 1021 O Street, Room 2100 SENATE JUDICIARY, UMBERG, THOMAS, Chair

Summary: The California Environmental Quality Act (CEQA) authorizes a state agency or a local agency that determines that a project is not subject to CEQA to file a notice of exemption with the office or the county clerk of each county in which the project will be located, as provided. CEOA requires the county clerk to make the notice available for public inspection and post the notice within 24 hours of receipt in the office or on the internet website of the county clerk, as specified. If a person has made a written request to a public agency for a copy of a notice of determination or notice of exemption for a project before the date on which the public agency approves or determines to carry out the project, CEQA requires the public agency, no later than 5 days from the date of the public agency's action, to deposit a copy of the written notice addressed to that person in the United States mail, first-class postage prepaid. CEQA provides that the date upon which the notice is mailed does not affect the limitations periods applicable to specified actions or proceedings to attack, review, set aside, void, or annul specified acts or decisions of a public agency on the grounds of noncompliance with CEQA. The bill would require the county clerk to post the notice both in the office and on the internet website of the county clerk within 24 hours of receipt. The bill would require a public agency to provide both the notice and any subsequent amended, corrected, or revised notice, as specified, in response to a written request for the notice, regardless of the delivery method. The bill would toll, except as provided, the limitations periods applicable to specified actions or proceedings to attack, review, set aside, void, or annul specified acts or decisions of a public agency until the date on which the public agency deposits in the mail or sends by email to the requestor a copy of the notice, including any subsequent amended, corrected, or revised notice, or the date on which the public agency submits the notice to a specified state entity, as described.

Position Priority
Watch B. Watch

SB 231 (Hurtado D) Water measurement.

Status: 3/21/2023-From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Summary: Current law requires the State Water Resources Control Board, in collaboration with the Department of Water Resources, the California Bay-Delta Authority or its successor agency, and the State Department of Public Health, to prepare and submit a report to the Legislature by January 1, 2009, evaluating the feasibility, estimated costs, and potential means of financing a coordinated water measurement database. This bill would require the board, in collaboration with the department, the authority or its successor agency, and the State Department of Public Health, to prepare and submit an update to the report to the Legislature by January 1, 2025, evaluating the feasibility, estimated costs, and potential means of financing a coordinated water measurement database, as specified.

Position Priority
Watch B. Watch

SB 272 (Laird D) Sea level rise: planning and adaptation.

Status: 3/28/2023-From committee: Do pass and re-refer to Com. on GOV. & F. (Ayes 9. Noes 0.) (March 28). Re-referred to Com. on GOV. & F.

Summary: Would require a local government, as defined, lying, in whole or in part, within the coastal zone, as defined, or within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as defined, to implement sea level rise planning and adaptation through either submitting, and receiving approval for, a local coastal program, as defined, to the California Coastal Commission or submitting, and receiving approval for, a subregional San Francisco Bay shoreline resiliency plan to the San Francisco Bay Conservation and Development Commission, as applicable, on or before January 1, 2034. By imposing additional requirements on local governments, the bill would impose a state-mandated local program. The bill would require local governments that receive approval for sea level rise planning and adaptation on or before January 1, 2029, to be prioritized for sea level rise funding, upon appropriation by the Legislature, for the implementation of projects in the local government's approved sea level rise adaptation plan. The bill would require, on or before December 31, 2024, the California Coastal Commission and the San Francisco Bay Conservation and Development Commission, in close coordination with the Ocean Protection Council and the California Sea Level Rise State and Regional Support Collaborative, to establish guidelines for the preparation of that planning and adaptation. The bill would make the operation of its provisions contingent upon an appropriation for its purposes by the Legislature in the annual Budget Act or another statute.

Position Priority

Watch B. Watch

SB 315 (Hurtado D) Groundwater monitoring: interagency task force.

Status: 3/21/2023-From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Summary: Current law requires the State Water Resources Control Board to integrate existing monitoring programs and design new program elements, as necessary, for the purpose of establishing a comprehensive monitoring program capable of assessing each groundwater basin in the state through direct and other statistically reliable sampling approaches, and to create an interagency task force composed of representatives of listed state agencies for various purposes, including to identify actions necessary to establish the monitoring program and to identify measures that would increase coordination among state and federal agencies that collect groundwater contamination information. Current law requires the state board to convene an advisory committee to the interagency task force with specified members. This bill would alter the membership of the advisory committee by changing the number of representatives of agriculture from 2 to 4.

Position Priority
Watch B. Watch

SB 414 (Allen D) Drought-tolerant landscaping: local incentive programs: synthetic grass: artificial turf.

Status: 3/14/2023-Set for hearing March 29.

Calendar: 3/29/2023 9:30 a.m. - 1021 O Street, Room 2200 SENATE GOVERNANCE AND

FINANCE, CABALLERO, ANNA, Chair

Summary: Current law prohibits a city, including a charter city, county, and city and county, from enacting or enforcing any ordinance or regulation that prohibits the installation of drought-tolerant landscaping, synthetic grass, or artificial turf on residential property, as specified. The Personal Income Tax Law and the Corporation Tax Law, in conformity with federal income tax law, generally defines "gross income" as income from whatever source derived, except as specifically excluded. Current law provides, among other exclusions, an exclusion from gross income for any amount received as a rebate, voucher, or other financial incentive issued by a public water system, as defined, local government, or state agency for participation in a turf replacement water conservation program. This bill would prohibit a city, including a charter city, county, city and county, or special district, from issuing a rebate, voucher, or other financial incentive for the use of synthetic grass or artificial turf that contains contaminants, including zinc, plastic, or perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Position Priority
Watch B. Watch

SB 865 (Laird D) Municipal water districts: automatic exclusion of cities.

Status: 3/27/2023-April 12 hearing postponed by committee.

Summary: Current law authorizes a governing body of a municipal water district to adopt an ordinance excluding any territory annexed to a metropolitan water district organized under the Metropolitan Water District Act, if the territory is annexed prior to the effective date of the formation of the municipal water district. Current law requires the Secretary of State to issue a certificate reciting the passage of the ordinance and the exclusion of the area from the municipal water district within 10 days of receiving a certified copy of the ordinance. This bill would extend the number of days the Secretary of State has to issue a certificate to 14 days.

Position Priority
Watch B. Watch

(Allen D) Drought and Water Resilience, Wildfire and Forest Resilience, Coastal Resilience, Extreme Heat Mitigation, Biodiversity and Nature-Based Climate Solutions, Climate Smart Agriculture, and Park Creation and Outdoor Access Bond Act of 2023.

Status: 3/28/2023-From committee: Do pass and re-refer to Com. on GOV. & F. (Ayes 8. Noes 0.) (March 28). Re-referred to Com. on GOV. & F.

Summary: Would enact the Drought and Water Resilience, Wildfire and Forest Resilience, Coastal Resilience, Extreme Heat Mitigation, Biodiversity and Nature-Based Climate Solutions, Climate Smart Agriculture, and Park Creation and Outdoor Access Bond Act of 2023, which, if approved by the voters, would authorize the issuance of bonds in an unspecified amount pursuant to the State General Obligation Bond Law to finance projects for drought and water resilience, wildfire and forest resilience, coastal resilience, extreme heat mitigation, biodiversity and nature-based climate solutions, climate smart agriculture, and park creation and outdoor access programs.

Position Priority
Watch B. Watch

C. Spot Bill

AB 396 (Fong, Vince R) Dams.

Status: 2/3/2023-From printer. May be heard in committee March 5.

Summary: Current law regulates the construction and operation of dams and exempts certain structures for these purposes. Current law requires the owner of such exempt structures to employ a registered civil engineer to supervise the structure, as prescribed. This bill would make nonsubstantive changes to the above provision.

Position Priority
Watch C. Spot Bill

AB 422 (Alanis R) Natural Resources Agency: statewide water storage: tracking.

Status: 2/9/2023-Referred to Com. on W., P., & W.

Summary: Would require the Natural Resources Agency, on or before June 1, 2024, to post on its publicly available internet website information tracking the progress to increase statewide water storage, and to keep that information updated.

Position Priority
Watch C. Spot Bill

AB 1573 (Friedman D) Water conservation: landscape design: model ordinance.

Status: 3/27/2023-Re-referred to Com. on W., P., & W.

Calendar: 4/18/2023 9 a.m. - State Capitol, Room 444 ASSEMBLY WATER, PARKS AND

WILDLIFE, BAUER-KAHAN, REBECCA, Chair

Summary: The Water Conservation in Landscaping Act provides for a model water efficient landscape ordinance that is adopted and updated at least every 3 years by the Department of Water Resources, unless the department makes a specified finding. Current law requires a local agency to adopt the model ordinance or to adopt a water efficient landscape ordinance that is at least as effective in conserving water as the updated model ordinance, except as specified. Current law specifies the provisions of the updated model ordinance, as provided. Current law includes a related statement of legislative findings and declarations. This bill would require the updated model ordinance to include provisions that require that plants included in a landscape design plan be selected based on their adaptability to climatic, geological, and topographical conditions of the project site, as specified. The bill would also exempt landscaping that is part of ecological restoration projects that do not require a permanent irrigation system, mined-land reclamation projects that do not require a permanent irrigation system, and existing plant collections, as part of botanical gardens and arboretums open to the public, from the model ordinance.

Position Priority
Watch C. Spot Bill

Total Measures: 35

Total Tracking Forms: 35





ACTION ITEM April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre Staff Contact: Heather Baez

Interim General Manager

SUBJECT: AB 557 (HART) – OPEN MEETINGS: TELECONFERENCES

STAFF RECOMMENDATION

Staff recommends the Board of Directors vote to adopt a support position on AB 557 (Hart) and join CSDA's coalition letter and outreach efforts.

BILL SUMMARY

Assembly Bill 557 would eliminate the January 1, 2024 sunset on the provisions of the Brown Act that provided additional flexibility for local agencies looking to meet remotely during an emergency while still maintaining public access and transparency.

Additionally, this measure would adjust the timeframe for the resolutions passed to renew an agency's temporary transition to emergency remote meetings to 45 days, up from the previous number of 30 days.

ARGUMENTS IN SUPPORT

AB 557 preserves the critical flexibility for local agencies needing to meet remotely to continue providing the public with essential services during a Governor-declared emergency.

In cases where a state of emergency persists, AB 361 required local agencies to renew their emergency remote meeting resolution within 30-days. However, many agencies regularly meet once-per-month (e.g. every third-Tuesday), which is sometimes a span of just over 30 days. This forced agencies to unnecessarily move meetings to days and times less accustomed to the public or to expend unnecessary time and expense to conduct an

Budgeted (Y/N): n/a	Budgeted amount: n/a		Core X	Choice			
Action item amount: None		Line item:					
Fiscal Impact (explain if unbudgeted):							

additional meeting. By adjusting the renewal period for resolutions to 45 days (up from 30 days), this measure would provide accommodation for those agencies regularly meeting on a fixed date every month.

ARGUMENTS IN OPPOSITION

None on file.

BOARD OPTIONS

Option #1

• Adopt a support position on AB 557 and join CSDA's coalition and outreach efforts.

Fiscal Impact: If enacted, this measure could potentially save public agencies time and money as they could finish projects sooner and more efficiently.

Option #2

Take no action

Fiscal Impact: Same as above

STAFF RECOMMENDATION

Option #1

ATTACHED:

AB 557 Full Text

Introduced by Assembly Member Hart

February 8, 2023

An act to amend and repeal Section 54953 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 557, as introduced, Hart. Open meetings: local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act, requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding providing for the ability of the public to observe and provide comment. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined.

Existing law, until January 1, 2024, authorizes a local agency to use teleconferencing without complying with those specified teleconferencing requirements in specified circumstances when a

AB 557 -2 -

declared state of emergency is in effect, or in other situations related to public health, as specified. If there is a continuing state of emergency, or if state or local officials have imposed or recommended measures to promote social distancing, existing law requires a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law requires a legislative body that holds a teleconferenced meeting under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option. Existing law prohibits a legislative body that holds a teleconferenced meeting under these abbreviated teleconferencing procedures from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time.

This bill would extend the above-described abbreviated teleconferencing provisions when a declared state of emergency is in effect, or in other situations related to public health, as specified, indefinitely. The bill would also extend the period for a legislative body to make the above-described findings related to a continuing state of emergency and social distancing to not later than 45 days after the first teleconferenced meeting, and every 45 days thereafter, in order to continue to meet under the abbreviated teleconferencing procedures.

The bill would additionally make nonsubstantive changes to those provisions and correct erroneous cross references .

(2) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

-3- AB 557

The people of the State of California do enact as follows:

SECTION 1. Section 54953 of the Government Code, as amended by Section 1 of Chapter 285 of the Statutes of 2022, is amended to read:

- 54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.
- (b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.
- (2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:
- (A) All votes taken during a teleconferenced meeting shall be by rollcall.
- (B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.
- (C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.
- (D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.
- (3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the

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legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e).

- (c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.
- (2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
- (3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.
- (d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
- (2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.
- (3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare

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and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

- (e) (1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:
- (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- (B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- (C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- (2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:
- (A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.
- (B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body

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shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

- (C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.
- (D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.
- (E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph $\overline{(F)}$, $\overline{(D)}$, to provide public comment until that timed public comment period has elapsed.
- (ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), (D), or otherwise be recognized for the purpose of providing public comment.
- (iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), (D), until the timed general public comment period has elapsed.
- (3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 45 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph

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1 (1), and every-30 45 days thereafter, make the following findings 2 by majority vote:

- (A) The legislative body has reconsidered the circumstances of the state of emergency.
 - (B) Any of the following circumstances exist:

- (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
- (ii) State or local officials continue to impose or recommend measures to promote social distancing.
- (4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.
- (f) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:
- (A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:
 - (i) A two-way audiovisual platform.
- (ii) A two-way telephonic service and a live webcasting of the meeting.
- (B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.
- (C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.
- (D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of

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a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

- (E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.
- (F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.
- (2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:
 - (A) One of the following circumstances applies:
- (i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.
- (ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section

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56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

- (I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.
- (II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.
- (B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
- (C) The member shall participate through both audio and visual technology.
- (3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.
- (g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.
- (h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

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(i) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

- (2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.
- (j) For the purposes of this section, the following definitions shall apply:
- (1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.
 - (2) "Just cause" means any of the following:
- (A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in Section 12945.2.
- (B) A contagious illness that prevents a member from attending in person.
- (C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).
- (D) Travel while on official business of the legislative body or another state or local agency.
- (3) "Remote location" means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.
- (4) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.
- (5) "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

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(6) "Teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

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- (7) "Two-way audiovisual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.
- (8) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.
- (9) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.
- (k) This section shall remain in effect only until January 1, 2024, 2026, and as of that date is repealed.
- SEC. 2. Section 54953 of the Government Code, as amended by Section 2 of Chapter 285 of the Statutes of 2022, is amended to read:
- 54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.
- (b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.
- (2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:
- (A) All votes taken during a teleconferenced meeting shall be by rollcall.
- 39 (B) The teleconferenced meetings shall be conducted in a 40 manner that protects the statutory and constitutional rights of the

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1 parties or the public appearing before the legislative body of a local agency.

- (C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.
- (D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.
- (3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in—subdivision (d). subdivisions (d) and (e).
- (c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.
- (2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
- (3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.
- (d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the

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authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

- (2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.
- (3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.
- (e) (1) The legislative body of a local agency may use teleconferencing without complying with *the requirements of* paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:
- (A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:
 - (i) A two-way audiovisual platform.
- 38 (ii) A two-way telephonic service and a live webcasting of the meeting.

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if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

- (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- (B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- (C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- (2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(B)

- (A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.
- (C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D)

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from

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broadcasting the meeting may be challenged pursuant to Section54960.1.

(E)

- (C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.
 - (F)
- (D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.
- (2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:
 - (A) One of the following circumstances applies:
- (i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.
- (ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:
- (I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member

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shall make a separate request for each meeting in which they seek
 to participate remotely.

- (II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.
- (B) The member shall publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
- (C) The member shall participate through both audio and visual technology.
- (3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.
- (E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (D), to provide public comment until that timed public comment period has elapsed.
- (ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (D), or otherwise be recognized for the purpose of providing public comment.
- (iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (D), until the timed general public comment period has elapsed.

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(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 45 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 45 days thereafter, make the following findings by majority vote:

- (A) The legislative body has reconsidered the circumstances of the state of emergency.
 - (B) Any of the following circumstances exist:

- (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
- (ii) State or local officials continue to impose or recommend measures to promote social distancing.
- (4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.
- (f) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.
- (g) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.
- (h) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.
- (2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.
- (i) For the purposes of this section, the following definitions shall apply:

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(1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

- (2) "Just cause" means any of the following:
- (A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in Section 12945.2.
- (B) A contagious illness that prevents a member from attending in person.
- (C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (f).
- (D) Travel while on official business of the legislative body or another state or local agency.
- (3) "Remote location" means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (e), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.
- (4) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.
- (1) "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).
- 33 (5)
 - (2) "Teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.
 - (6) "Two-way audiovisual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

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(7) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

- (8) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.
- (j) This section shall become operative January 1, 2024, shall remain in effect only until January 1, 2026, and as of that date is repealed.
 - (j) This section shall become operative January 1, 2026.
- SEC. 3. Section 54953 of the Government Code, as added by Section 3 of Chapter 285 of the Statutes of 2022, is repealed.
- 54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.
- (b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.
- (2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rolleall.
- (3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an

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opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

- (4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.
- (c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.
- (2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
- (3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.
- (d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
- (2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is

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established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members

(e) This section shall become operative January 1, 2026.

SEC. 4. The Legislature finds and declares that Sections 1 and 2 of this act, which amend Section 54953 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings.



ACTION ITEM April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre Staff Contact: Heather Baez

Interim General Manager

SUBJECT: AB 735 (BERMAN) - WORKFORCE DEVELOPMENT: UTILITY CAREERS

STAFF RECOMMENDATION

Staff recommends the Board of Directors vote to adopt a support position on AB 735 (Berman) and join CMUA's coalition letter and outreach efforts.

BILL SUMMARY

Assembly Bill 735 would create a High Road Utility Careers program at the California Workforce Development Board (CWDB) to address workforce needs of electric, gas, water, wastewater water, and telecommunication industries (the utility sector).

BACKGROUND

California is experiencing a silver tsunami of retirements and other departures in crucial roles in the utility sector. This is leaving gaps that utilities must quickly fill in order to make progress on California's clean energy goals, maintain reliable water service, and create more resilient infrastructure, among other essential services provided by the utilities workforce. Utilities face multiple challenges in trying to fill these workforce gaps including recruiting workers and bringing greater awareness of the high-quality job and training opportunities.

A workforce pipeline for prospective and existing workers, including those in underrepresented populations, is critical to meet workforce needs. The utility sector offers a wide range of high-quality career pathways in a stable and growing industry. Jobs in this sector typically provide sustainable salaries, health benefits, a retirement plan, and job security.

The CWDB is responsible for the oversight and continuous improvement of California's workforce system. The CWDB currently runs the High Road Construction Careers

Budgeted (Y/N): n/a	Budgeted amount: n/a		Core X	Choice			
Action item amount: None		Line item:					
Fiscal Impact (explain if unbudgeted):							

program to place interested workers in construction-related jobs. California and the CWDB are committed to a High Road vision for the state's workforce development system that embodies the principles of job quality, worker voice, equity, and environmental sustainability. Implementing this vision through policy, programs, and other practices will benefit workers, job-seekers, and industry as well as the state's workforce development system.

While there have been regional projects to address workforce needs in the utility sector, a long-term, statewide program is needed to connect existing resources with individuals interested in careers in the utility sector in order to ensure a continued reliable workforce in California.

ARGUMENTS IN SUPPORT

AB 735 would create a statewide approach to address workforce challenges for the utility sector through a High Road Utility Careers program. The purpose of the program would be to connect existing resources with individuals interested in careers in the utility sector. This would include:

- Creating partnerships with regional and state trade associations, industry groups, vocational training programs offered through nonprofit, community-based organizations, and unions;
- Prioritizing supportive services and career placement assistance to individuals from underserved and underrepresented populations;
- And educating the potential workforce through a network of trainings, workshops, classes, and presentations on regional and statewide opportunities in the utility workforce.

ARGUMENTS IN OPPOSITION

None on file.

BOARD OPTIONS

Option #1

Adopt a support position on AB 735 and join CMUA's coalition and outreach efforts.

Fiscal Impact: If enacted, this measure could potentially save public agencies time and money as they could finish projects sooner and more efficiently.

Option #2

Take no action

Fiscal Impact: Same as above

STAFF RECOMMENDATION

Option #1

ATTACHED: AB 735 Full Text

Introduced by Assembly Member Berman

February 13, 2023

An act to add Section 49605 to the Education Code, and to amend Section 14005 of, and to add Article 5 (commencing with Section 14050) to Chapter 3 of Division 7 of, the Unemployment Insurance Code, relating to workforce development.

LEGISLATIVE COUNSEL'S DIGEST

AB 735, as introduced, Berman. Workforce development: utility careers.

(1) Existing law, the California Workforce Innovation and Opportunity Act, requires the California Workforce Development Board to assist the Governor in the development of a high road economy that offers an educated and skilled workforce with fair compensation and treatment in the workplace. In this regard, existing law requires the board to assist in the administration, promotion, and expansion of, as well as field assistance for, high road training partnerships, as defined.

This bill would establish the High Road Utility Careers (HRUC) program, to be administered by the board, to connect existing resources with individuals interested in careers in the utility sector and ensure a continued reliable workforce for California utilities. The bill would require the board to administer the HRUC program through partnerships with statewide water, wastewater, and energy utility associations and to coordinate the program with existing and future programs and initiatives administered by the board, including high road training partnerships, in order to align interested individuals with available resources. The bill would require the HRUC program, upon

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appropriation by the Legislature, to dedicate funding and resources toward accomplishing specified goals, including connecting workers to high-quality jobs or entry-level work with defined routes to advancement and increasing skills and opportunities while expanding pipelines for low-income populations.

(2) Existing law requires the State Department of Education to develop a career guidance model for science and technology for use in school district counseling programs in order to provide information to pupils in grades 7 through 12, regarding the potential for employment, educational requirements, and other matters pertaining to careers in the fields of science and technology.

This bill would require the department, by January 1, 2025, to partner with regional and statewide trade associations, among other groups, to develop and distribute informational materials for career guidance to pupils in grades 9 through 12, regarding the potential for employment, educational requirements, and other matters pertaining to careers in these utilities.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- SECTION 1. Section 49605 is added to the Education Code,
- 2 immediately following Section 49604, to read:
- 3 49605. No later than January 1, 2025, the State Department of
- 4 Education shall partner with regional and statewide trade
- 5 associations and industry groups for water, wastewater, and electric
- 6 utilities, and with vocational training programs offered through
- 7 unions and nonprofit, community-based organizations, to develop
- 8 and distribute informational materials for career guidance to pupils
- 9 in grades 9 through 12, regarding the potential for employment,
- 10 educational requirements, and other matters pertaining to careers
- in these utilities. Interested pupils shall be directed to the
- 12 Employment Development Department for potential placement in
- 12 Employment Development Department for potential placement in utility jobs.
- 14 SEC. 2. Section 14005 of the Unemployment Insurance Code
- 15 is amended to read:
- 16 14005. For purposes of this division:
- 17 (a) "Board" means the California Workforce Development
- 18 Board.

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(b) "Agency" means the Labor and Workforce Development Agency.

- (c) "Career pathways," "career ladders," or "career lattices" are an identified series of positions, work experiences, or educational benchmarks or credentials with multiple access points that offer occupational and financial advancement within a specified career field or related fields over time. "Career pathways," "career ladders," and "career lattices" offer combined programs of rigorous and high-quality education, training, and other services that do all of the following:
- (1) Align with the skill needs of industries in the economy of the state or regional economy involved.
- (2) Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the National Apprenticeship Act of 1937 (29 U.S.C. Sec. 50 et seq.), except as in Section 3226 of Title 29 of the United States Code.
- (3) Include counseling to support an individual in achieving the individual's education and career goals.
- (4) Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.
- (5) Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable.
- (6) Enable an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential.
- (7) Help an individual enter or advance within a specific occupation or occupational cluster.
- (d) "Cluster-based sector strategies" mean methods of focusing workforce and economic development on those sectors that have demonstrated a capacity for economic growth and job creation in a particular geographic area.
- (e) "Data driven" means a process of making decisions about investments and policies based on systematic analysis of data, which may include data pertaining to labor markets.
- (f) "Economic security" means, with respect to a worker, earning a wage sufficient to support a family adequately, and, over time,

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to save for emergency expenses and adequate retirement income, based on factors such as household size, the cost of living in the worker's community, and other factors that may vary by region.

- (g) "Evidence-based" means making use of policy research as a basis for determining best policy practices. Evidence-based policymakers adopt policies that research has shown to produce positive outcomes, in a variety of settings, for a variety of populations over time. Successful, evidence-based programs deliver quantifiable and sustainable results. Evidence-based practices differ from approaches that are based on tradition, belief, convention, or anecdotal evidence.
- (h) "High-priority occupations" mean occupations that have a significant presence in a targeted industry sector or industry cluster, are in demand, or projected to be in demand, by employers, and pay or lead to payment of a wage that provides economic security.
- (i) (1) "In-demand industry sector or occupation" means either of the following:
- (A) An industry sector that has a substantial current or potential impact, including through jobs that lead to economic self-sufficiency and opportunities for advancement, on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.
- (B) An occupation that currently has or is projected to have a number of positions, including positions that lead to economic self-sufficiency and opportunities for advancement, in an industry sector so as to have a significant impact on the state, regional, or local economy, as appropriate.
- (2) The determination of whether an industry sector or occupation is "in-demand" under this subdivision shall be made by the board or local board, or through the regional planning process in which local boards participate under the Workforce Innovation and Opportunity Act, as appropriate, using state and regional business and labor market projections, including the use of labor market information.
- (j) "Individual with employment barriers" means an individual with any characteristic that substantially limits an individual's ability to obtain employment, including indicators of poor work history, lack of work experience, or access to employment in nontraditional occupations, long-term unemployment, lack of

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- 1 educational or occupational skills attainment, dislocation from
- 2 high-wage and high-benefit employment, low levels of literacy or
- 3 English proficiency, disability status, or welfare dependency,
- 4 including members of all of the following groups:
- 5 (1) Displaced homemakers.
 - (2) Low-income individuals.
- 7 (3) Indians, Alaska Natives, and Native Hawaiians, as those terms are defined in Section 3221 of Title 29 of the United States 9 Code.
- 10 (4) Individuals with disabilities, including youths who are individuals with disabilities.
 - (5) Older individuals.
 - (6) Ex-offenders.

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- (7) Homeless individuals, as defined in Section 14043e-2(6) of Title 42 of the United States Code, or homeless children and youths, as defined in Section 11434a(2) of Title 42 of the United States Code.
 - (8) Youth who are in, or have aged out of, the foster care system.
- (9) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers.
- (10) Eligible migrant and seasonal farmworkers, as defined in Section 3322(i) of Title 29 of the United States Code.
- (11) Individuals within two years of exhausting lifetime eligibility under Part A of Title IV of the Social Security Act (42 U.S.C. Sec. 601 et seq.).
 - (12) Single parents, including single, pregnant women.
 - (13) Long-term unemployed individuals.
 - (14) Transgender and gender nonconforming individuals.
- (15) Any other groups as the Governor determines to have barriers to employment.
- (k) "Industry cluster" means a geographic concentration or emerging concentration of interdependent industries with direct service, supplier, and research relationships, or independent industries that share common resources in a given regional economy or labor market. An industry cluster is a group of
- 37 employers closely linked by common product or services,
- 38 workforce needs, similar technologies, and supply chains in a given
- 39 regional economy or labor market.

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(*l*) "Industry or sector partnership" means a workforce collaborative, convened or acting in partnership with the board or a local board, that does the following:

- (1) Organizes key stakeholders in an industry cluster into a working group that focuses on the shared goals and human resources needs of the industry cluster and that includes, at the appropriate stages of development of the partnership:
- (A) Representatives of multiple businesses or other employers in the industry cluster, including small and medium-sized employers when practicable.
- (B) One or more representatives of a recognized state labor organization or central labor council, or another labor representative, as appropriate.
- (C) One or more representatives of an institution of higher education with, or another provider of, education or training programs that support the industry cluster.
- 17 (2) The workforce collaborative may include representatives of any of the following:
 - (A) State or local government.
- 20 (B) State or local economic development agencies.
- 21 (C) State boards or local boards, as appropriate.
- 22 (D) A state workforce agency or entity providing employment 23 services.
 - (E) Other state or local agencies.
- 25 (F) Business or trade associations.
 - (G) Economic development organizations.
- 27 (H) Nonprofit organizations, community-based organizations, 28 or intermediaries.
- 29 (I) Philanthropic associations.
 - (J) Industry associations.
- 31 (K) Other organizations, as determined to be necessary by the 32 members comprising the industry sector or partnership.
 - (m) "Industry sector" means those firms that produce similar products or provide similar services using somewhat similar business processes, and are closely linked by workforce needs, within a regional labor market.
- 37 (n) "Local labor federation" means a central labor council that 38 is an organization of local unions affiliated with the California 39 Labor Federation or a local building and construction trades council

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affiliated with the State Building and Construction Trades Council of California.

- (o) "Sector strategies" means methods of prioritizing investments in competitive and emerging industry sectors and industry clusters on the basis of labor market and other economic data indicating strategic growth potential, especially with regard to jobs and income, and exhibit the following characteristics:
- (1) Focus workforce investment in education and workforce training programs that are likely to lead to jobs providing economic security or to an entry-level job with a well-articulated career pathway into a job providing economic security.
- (2) Effectively boost labor productivity or reduce business barriers to growth and expansion stemming from workforce supply problems, including skills gaps and occupational shortages by directing resources and making investments to plug skills gaps and provide education and training programs for high-priority occupations.
- (3) May be implemented using articulated career pathways or lattices and a system of stackable credentials.
- (4) May target underserved communities, disconnected youths, incumbent workers, and recently separated military veterans.
- (5) Frequently are implemented using industry or sector partnerships.
- (6) Typically are implemented at the regional level where sector firms, those employers described in subdivisions (j) and (*l*), often share a common labor market and supply chains. However, sector strategies may also be implemented at the state or local level depending on sector needs and labor market conditions.
- (p) "Workforce Innovation and Opportunity Act of 2014" means the federal act enacted as Public Law 113-128.
- (q) (1) "Earn and learn" includes, but is not limited to, a program that does either of the following:
- (A) Combines applied learning in a workplace setting with compensation allowing workers or students to gain work experience and secure a wage as they develop skills and competencies directly relevant to the occupation or career for which they are preparing.
- (B) Brings together classroom instruction with on-the-job training to combine both formal instruction and actual paid work experience.

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1 (2) "Earn and learn" programs include, but are not limited to, 2 all of the following:

(A) Apprenticeships.

- (B) Preapprenticeships.
- 5 (C) Incumbent worker training.
- 6 (D) Transitional jobs, as described in paragraph (5) of subsection 7 (d) of Section 3174 of Title 29 of the United States Code, as that 8 section read on January 1, 2021, and subsidized employment with 9 an employer of record, which may include, but not be limited to, 10 an employment social enterprise or a worker cooperative, particularly for individuals with barriers to employment.
 - (E) Paid internships and externships.
 - (F) Project-based compensated learning.
 - (r) "High road" means a set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity and a clean environment. The strategies include, but are not limited to, interventions that:
 - (1) Improve job quality and job access, including for women and people from underserved and underrepresented populations.
 - (2) Meet the skill and profitability needs of employers.
 - (3) Meet the economic, social, and environmental needs of the community.
 - (s) "High road training partnership" means an initiative or project that models strategies for developing industry-based, worker-focused training partnerships, including labor-management partnerships. High Road Training partnerships operate via regional, industry- or sector-based training partnerships comprised of employers, workers, and their representatives including organized labor, community-based organizations, education, training, and social services providers, and labor market intermediaries. High Road Training partnerships demonstrate job quality standards and employment practices that include, but are not limited to, the following:
 - (1) Provision of comparatively good wages and benefits, relative to the industry, occupation, and labor market in which participating workers are employed.
 - (2) Payment of workers at or above local or regional living wage standards as well as payment at or above regional prevailing wage standards where such standards exist for the occupations in question.

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(3) A history of investment in employee training, growth, and development.

- (4) Provision of opportunities for career advancement and wage growth.
 - (5) Safe and healthy working conditions.

- (6) Consistent compliance with workplace laws and regulations, including proactive efforts to remedy past problems.
- (7) Adoption of mechanisms to include worker voice and agency in the workplace.
- (t) "High road construction careers" are high road training partnerships that invest in regional training partnerships comprised of local building trades councils, workforce, community, and education interests that connect to state-approved apprenticeship programs, that utilize the standard Multi-Craft Core preapprenticeship training curriculum and provide a range of supportive services and career placement assistance to women and people from underserved and underrepresented populations.
- (u) "Career advancement" means demonstrated progression along a career ladder as evidenced by both wage growth and occupational advancement.
- (v) "Employment social enterprise" means a nonprofit or for-profit organization that meets all of the following requirements:
- (1) Is organized as a social purpose corporation or a benefit corporation, or as an organization incorporated within a larger organization.
- (2) Demonstrates evidence of a mission to provide and to access employment and social supports with on-the-job and life skills training to a direct labor force comprised of individuals with a "barrier to employment," as that phrase is defined in Section 3102 of Title 29 of the United States Code, as that section read on January 1, 2021.
- (3) Is evidence-based and utilizes data-driven policies in implementing procedures and measuring outcomes.
- (4) Produces or assembles goods or provides services, or a combination of both.
- (w) "Worker cooperative" has the same meaning as defined in Section 12253.5 of the Corporations Code.
- 38 (x) "High Road Utility Careers program" or "HRUC" means 39 the program established in Article 5 (commencing with Section 40 14050) of Chapter 3.

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SEC. 3. Article 5 (commencing with Section 14050) is added to Chapter 3 of Division 7 of the Unemployment Insurance Code, to read:

Article 5. High Road Utility Careers Program

- 14050. For purposes of this article, the following definitions apply:
- (a) "California Workforce Development Board" or "board" means the California Workforce Development Board established pursuant to Article 1 (commencing with Section 14010).
- (b) "HRUC program" or "HRUC" means the High Road Utility Careers program.
- (c) "Utilities" includes private and public entities that provide electric, gas, water, wastewater, sewer, trash, recycled water, or telecommunication services in California.
- 14051. (a) There is hereby established the High Road Utility Careers program, to be administered by the California Workforce Development Board.
- (b) The primary purpose of HRUC is to connect existing resources with individuals interested in careers in the utility sector and to ensure a continued reliable workforce for California utilities.
- (c) For purposes of administering the HRUC, the board shall do all of the following:
- (1) Administer the HRUC program through partnerships with statewide water, wastewater, and energy utility associations. The board shall coordinate, where possible, and share resources, tools, and information with these partners.
- (2) Coordinate the HRUC program with existing and future programs and initiatives administered by the board, including high road training partnerships and the Breaking Barriers to Employment Initiative, in order to align interested individuals with available resources.
- (3) Partner with public schools, including, but not limited to, high schools, technical colleges, community colleges, universities, and continuing education schools to promote career placement in the utility sector.
 - 14052. The HRUC program shall do all of the following:
- (a) Partner with regional and state trade associations, industry groups, vocational training programs offered through nonprofit,

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community-based organizations, and unions to promote training on essential job duties required for working in utilities and on diversity, equity, and inclusion. The board shall partner with public schools, including, but not limited to, high schools, technical colleges, community colleges, universities, and continuing education schools to promote career placement in the utility sector.

- (b) Prioritize supportive services and career placement assistance to people from underserved and underrepresented populations.
- (c) Provide individuals interested in employment within the utility sector with the services needed to enter, participate in, and complete broader workforce preparation, training, and education programs, and, ultimately, to obtain and retain employment.
- (d) Build systems and policies to advance equity, access to skills and economic opportunity, and job quality.
- (e) Through a network of trainings, workshops, classes, and presentations, seek to educate the potential workforce on regional and statewide opportunities in utility work.
- (f) (1) Seek to create regional partnerships across California with utility members.
- (2) These regional partnerships shall work together to collect existing content, and create new content, to reach potential candidates with an emphasis on diversity, equity, and inclusion.
- 14053. Upon appropriation by the Legislature for this express purpose, the HRUC program shall dedicate funding and resources toward accomplishing all of the following goals:
- (a) Connecting workers to high-quality jobs or entry-level work with defined routes to advancement.
- (b) Increasing skills and opportunities while expanding pipelines for low-income populations.
- (c) Prioritizing upward mobility for residents of low-income communities.
 - (d) Addressing worker, employer, and industry needs.
- (e) Developing workforce development programs or providing research, planning, and development, or both.
 - (f) Connecting workers to existing resources and services.
- (g) Developing regional strategies to support workers and communities in adapting to and creating new workforce opportunities.

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ACTION ITEM April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre Staff Contact: Heather Baez

Interim General Manager

SUBJECT: AB 1572 (FRIEDMAN) – POTABLE WATER, NONFUNCTIONAL TURF

STAFF RECOMMENDATION

Staff recommends the Board of Directors vote to adopt an oppose unless amended position on AB 1572 (Friedman) and join ACWA's coalition letter and outreach efforts.

BILL SUMMARY

Assembly Bill 1572 would prohibit the use of potable water for the irrigation of nonfunctional turf located on commercial, industrial, municipal, institutional, and multifamily residential properties, in stages between January 1, 2026 and January 1, 2029.

ARGUMENTS IN SUPPORT

According to the author's office, AB 1572 will help California businesses and communities save both water and money, and transition to sustainable alternatives that can keep landscapes beautiful.

ARGUMENTS IN OPPOSITION

There are a number of concerns that need to be addressed in AB 1572. Specifically, the proposed definition of nonfunctional turf, the scope of nonfunctional turf restrictions, and the compliance structure currently provided for in the measure. Additionally, the proposed bill disregards several key issues including explicit protection for tree health, considerations of stormwater absorption, and sources of funding for compliance. MWDOC staff engaged with ACWA staff and the nonfunctional turf working group, and concur with the amendments they are requesting of the author. Other Orange County members of the working group included staff from Irvine Ranch Water District, Mesa Water District, Orange County Water District, and Yorba Linda Water District.

Budgeted (Y/N): n/a	Budgeted amount: n/a		Core X	Choice			
Action item amount: None		Line item:					
Fiscal Impact (explain if unbudgeted):							

Below are excerpts from ACWA's letter sent to the Chair of the Assembly Water, Parks and Wildlife Committee that outlines these concerns and requested amendments agreed upon by the working group. ACWA's proposed amendments address most of the issues identified by MWDOC staff in review of the bill language and shared with ACWA staff.

Excerpts from ACWA letter dated March 13, 2023:

Definition of Nonfunctional Turf

The current definition of nonfunctional turf provided in AB 1572 is similar in concept to the definition adopted by the State Water Board in its emergency regulations, but the language is inconsistent. While the current emergency regulations are set to expire, not only could their effectiveness be extended, but the definition has been in effect for almost a year. We request aligning the definition in statute more closely with that in the emergency regulations.

Scope

The proposed ban in AB 1572 would encompass all urban outdoor landscapes other than single-family homes. We believe the exclusion of single-family homes is appropriate. Further, we appreciate that the bill limits the prohibition of irrigation to potable water, which recognizes local efforts to implement locally sustainable recycling programs that will help mitigate some of the impacts of drought on our landscapes. However, we are concerned about the inclusion of multifamily housing in the prohibition. Urban retail water suppliers do not uniformly categorize multifamily housing as either residential or as part of the commercial, industrial, and institutional sectors. Further, under the urban water use objective, which urban retail water suppliers have been working toward implementing, multifamily housing is considered residential. By combining multifamily housing with the commercial, industrial, and institutional sectors in this bill, different parts of the law would be treating these properties differently, leading to confusion.

Further, consistent with our comments on the State Water Board's emergency regulations, we are concerned about the potential impact to disadvantaged communities if multifamily housing is included. This bill prohibits irrigation of nonfunctional turf but does not require that nonfunctional turf be replaced with other climate appropriate landscaping. Many commercial and institutional properties will have strong incentives to replace their nonfunctional turf with an alternative landscape because these are public interfacing spaces. Many multifamily residential building owners will not have such strong incentives, especially in lower-income neighborhoods. By simply eliminating the irrigation of nonfunctional turf, these disadvantaged communities will face increased tree mortality and heat island impacts with nonfunctional turf simply being left to die with no appropriate replacement.

We request limiting the ban on irrigation of nonfunctional turf with potable water to the commercial, industrial, and institutional sectors as defined in the urban water use objective under Water Code section 10609.12 and providing a reference to this existing definition.

Compliance Structure

The compliance structure envisioned in this bill largely relies on the State Water Board for enforcement; we believe this is appropriate. We further appreciate that the bill allows for local agencies to enforce this ban but does not require them to do so. Urban retail water suppliers are funded by ratepayers and have limited resources; these agencies have to make decisions about where best to place their public resources based on local challenges and priorities, so this flexibility is appreciated.

However, there are a few provisions proposed in this bill that lack clarity and are left up to interpretation; depending on how these provisions are interpreted by the State Water Board, it could be extremely expensive and time intensive for local agencies to implement. This bill would require the State Water Board to implement regulations by July 1, 2025 that could include compliance extensions, methods of compliance, and reporting requirements for urban retail water suppliers. The State Water Board and DWR already request extensive reporting by local agencies, including monthly conservation reporting, an electronic annual report, annual water supply and demand assessments, urban water management plans, and water shortage contingency plans among others. The State Water Board does not need any additional authority to request information from local agencies, and ACWA is concerned about the level and duplicative reporting already being required by the State Water Board. We request deleting the requirement that the State Water Board include reporting requirements for urban retail water suppliers in its regulations to implement this bill.

This bill would require the State Water Board to conduct, in collaboration with the Department of Water Resources (DWR), rotating annual compliance audits. As part of this compliance scheme, this bill would require urban retail water suppliers to provide information to the State Water Board to facilitate compliance audits. Given the breadth of this requirement, we are concerned that this requirement may be overly burdensome and costly for local agencies. We request deleting this requirement, and replacing it with language allowing the State Water Board to coordinate with local agencies to obtain readily available information.

Further, we believe some of the timing in this bill could use revision. ACWA believes that in the case of banning the irrigation of nonfunctional turf, government should lead by example. This bill currently requires State owned and managed properties to comply with these requirements first, which we think is appropriate. We propose that the local institutional sector, which includes municipal governments and local water agencies, should be required to comply second, to set examples for the commercial and industrial sectors of how to replace nonfunctional turf with climate appropriate landscaping. Further, commercial and industrial sectors may need additional time and financing to appropriately implement these requirements. For these reasons, we request that institutional properties meet the requirements of AB 1572 one year earlier than commercial and industrial properties, with appropriate delayed implementation of compliance dates resulting from this proposed change.

AB 1572 currently requires urban retail water suppliers to include the prohibitions outlined in this bill in their "regulations governing the terms and conditions of water service." This requirement is both confusing and unnecessary. Local agencies do not

promulgate regulations and State law is more than adequate to enforce these requirements. We request that the requirement to duplicate this requirement in local rules be deleted.

Finally, this bill would require DWR to analyze and quantify how compliance with this chapter supports the goal of reducing reliance on the Sacramento-San Joaquin Delta. Prohibiting the irrigation or nonfunctional turf with potable water does not necessarily mean that no water will be used for irrigation. It is ACWA's hope that most properties will replace nonfunctional turf areas with climate appropriate landscaping; while these landscapes will need less water than turf, they still require regular watering. Further, urban retail water suppliers are required to report on their urban water use objective starting on January 1, 2024; most agencies have been working toward greater water efficiency in anticipation of these requirements, and agencies will continue to work to reduce consumption as necessary to meet these requirements. It would be difficult, if not impossible, to understand the impact of this ban on one particular water source given the breadth of other water efficiency activities across the state. *We request removing this reporting requirement*.

Tree Health

The urban water use objective and emergency regulations on the ban of nonfunctional turf both recognize the critical importance of maintaining tree health. This is an issue ACWA and our members are passionately engaged on and concerned about. During the last drought, urban tree mortality rates were unacceptably high leading to increased urban heat island impacts and other negative outcomes. Consistent with our support for the recognition of tree health in the emergency regulations, we request that AB 1572 provide for recognition of the critical importance of tree health.

While MWDOC staff has identified additional language within the bill that we would like to see addressed, we believe ACWA's stated position and proposed revisions to the bill are an appropriate starting point. Negotiations with the author will continue. MWDOC staff will also work closely with Metropolitan Water District staff as they identify amendments and work with the author's office.

BOARD OPTIONS

Option #1

 Adopt an oppose unless amended position on AB 1572 and join ACWA's coalition and outreach efforts.

Option #2

Take no action

STAFF RECOMMENDATION

Option #1

ATTACHED: AB 1572 Full Text

Introduced by Assembly Member Friedman

February 17, 2023

An act to amend Section 10608.12 of, to add Section 110 to, and to add Chapter 2.5 (commencing with Section 10608.14) to Part 2.55 of Division 6 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1572, as introduced, Friedman. Potable water: nonfunctional turf.

(1) Existing law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use of water.

This bill would make legislative findings and declarations concerning water use, including that the use of potable water to irrigate nonfunctional turf is wasteful and incompatible with state policy relating to climate change, water conservation, and reduced reliance on the Sacramento-San Joaquin Delta ecosystem. The bill would direct all appropriate state agencies to encourage and support the elimination of irrigation of nonfunctional turf with potable water.

(2) Existing law provides various findings and declarations of the Legislature related to sustainable water use and demand reduction. Existing law imposes various water use reduction requirements that apply to urban retail water suppliers, including a requirement that the state achieve a 20% reduction in urban per capita water use by December 31, 2020.

This bill would prohibit the use of potable water, as defined, for the irrigation of nonfunctional turf located on commercial, industrial, municipal, institutional, and multifamily residential properties, as

AB 1572 -2-

specified. The bill would require the State Water Resources Control Board to establish, no later than July 1, 2025, specified compliance, certification, and reporting requirements. The bill would require owners of covered properties to certify their compliance with these provisions, as specified. The bill would authorize an urban water supplier, city, county, or city and county to enforce these provisions. The bill would place related requirements on the board and the Department of Water Resources, including, beginning July 1, 2028, requiring the board, in collaboration with the department and with assistance from urban water suppliers, to annually conduct a compliance audit for 2 of the state's hydrologic regions, so that all of the state's hydrologic regions receive an audit once every 5 years, as specified. The bill would require the Division of Agriculture and Natural Resources within the office of the President of the University of California, in consultation with the Department of Education, to disseminate information on native and drought-tolerant plants that support vibrant ecosystems, including pollinators, in schools serving kindergarten and grades 1 through 12 and would additionally require the vice president of the division to, no later then June 30, 2026, report to the Senate Committee on Environmental Quality and the Assembly Committee on Water, Parks, and Wildlife on progress in implementing these provisions. The bill would require the Governor's Office of Business and Economic Development to support small and minority-owned businesses that provide services that advance compliance with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- SECTION 1. Section 110 is added to the Water Code, to read: 110. (a) The Legislature hereby finds and declares all of the following:
- 4 (1) The use of potable water to irrigate nonfunctional turf is 5 wasteful and incompatible with state policy relating to climate 6 change, water conservation, and reduced reliance on the 7 Sacramento-San Joaquin Delta ecosystem.
 - (2) The Governor reported in August 2022 that climate change will bring significant enduring reductions in California's water supply and that the state must take steps to respond to this reality.

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-3- AB 1572

(3) The State of Nevada enacted AB 356 in 2021 to prohibit the use of Colorado River water to irrigate nonfunctional turf on all properties except single-family residences by January 1, 2027.

- (b) It is the intent of the Legislature that the irrigation of grasses for agricultural production shall not be limited by requirements to eliminate the use of potable water to irrigate nonfunctional turf.
- (c) The Legislature hereby directs all appropriate state agencies to encourage and support the elimination of irrigation of nonfunctional turf with potable water.
- SEC. 2. Section 10608.12 of the Water Code is amended to read:
- 10608.12. Unless the context otherwise requires, the following definitions govern the construction of this part:
- (a) "Affordable housing" has the same meaning as defined in Section 34191.30 of the Health and Safety Code.

(a)

(b) "Agricultural water supplier" means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water. "Agricultural water supplier" includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers. "Agricultural water supplier" does not include the department.

(b)

- (c) "Base daily per capita water use" means any of the following:
- (1) The urban retail water supplier's estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous 10-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.
- (2) For an urban retail water supplier that meets at least 10 percent of its 2008 measured retail water demand through recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water supplier, the urban retail water supplier may extend the calculation described in paragraph (1) up to an additional five years to a maximum of a continuous 15-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.
- (3) For the purposes of Section 10608.22, the urban retail water supplier's estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous

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1 five-year period ending no earlier than December 31, 2007, and 2 no later than December 31, 2010.

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(d) "Baseline commercial, industrial, and institutional water use" means an urban retail water supplier's base daily per capita water use for commercial, industrial, and institutional users.

(d)

(e) "CII water use" means water used by commercial water users, industrial water users, institutional water users, and large landscape water users.

(e

12 (f) "Commercial water user" means a water user that provides or distributes a product or service.

14 (f

(g) "Compliance daily per capita water use" means the gross water use during the final year of the reporting period, reported in gallons per capita per day.

(g

- (h) "Disadvantaged community" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.
- (i) "Division" means the Division of Agriculture and Natural Resources within the office of the President of the University of California.

25 (h)

- (*j*) "Gross water use" means the total volume of water, whether treated or untreated, entering the distribution system of an urban retail water supplier, excluding all of the following:
- (1) Recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water supplier.
- (2) The net volume of water that the urban retail water supplier places into long-term storage.
- (3) The volume of water the urban retail water supplier conveys for use by another urban water supplier.
- (4) The volume of water delivered for agricultural use, except as otherwise provided in subdivision (f) of Section 10608.24.

37 (i

(k) "Industrial water user" means a water user that is primarily a manufacturer or processor of materials as defined by the North American Industry Classification System code sectors 31 to 33,

5 AB 1572

inclusive, or an entity that is a water user primarily engaged in research and development.

(j)

(1) "Institutional water user" means a water user dedicated to public service. This type of user includes, among other users, higher education institutions, schools, courts, churches, hospitals, government facilities, and nonprofit research institutions.

(k)

(m) "Interim urban water use target" means the midpoint between the urban retail water supplier's base daily per capita water use and the urban retail water supplier's urban water use target for 2020.

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(n) "Large landscape" means a nonresidential landscape as described in the performance measures for CII water use adopted pursuant to Section 10609.10.

(m)

- (o) "Locally cost effective" means that the present value of the local benefits of implementing an agricultural efficiency water management practice is greater than or equal to the present value of the local cost of implementing that measure.
- (p) "Multifamily residential property" means a property that includes a building containing more than four dwelling units.
- (q) "Nonfunctional turf" means any turf that is not located in areas designated by a property owner or a government agency for recreational use or public assembly. Nonfunctional turf does not include turf located in cemeteries.

(n)

(r) "Performance measures" means actions to be taken by urban retail water suppliers that will result in increased water use efficiency by CII water users. Performance measures may include, but are not limited to, educating CII water users on best management practices, conducting water use audits, and preparing water management plans. Performance measures do not include process water.

36 (o)

(s) "Potable reuse" means direct potable reuse, indirect potable reuse for groundwater recharge, and reservoir water augmentation as those terms are defined in Section 13561.

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1 (t) "Potable water" means water that is suitable for human 2 consumption.

(p)

- (u) "Process water" means water used by industrial water users for producing a product or product content or water used for research and development. Process water includes, but is not limited to, continuous manufacturing processes, and water used for testing, cleaning, and maintaining equipment. Water used to cool machinery or buildings used in the manufacturing process or necessary to maintain product quality or chemical characteristics for product manufacturing or control rooms, data centers, laboratories, clean rooms, and other industrial facility units that are integral to the manufacturing or research and development process is process water. Water used in the manufacturing process that is necessary for complying with local, state, and federal health and safety laws, and is not incidental water, is process water. Process water does not mean incidental water uses.
- (v) "Public water system" has the same meaning as defined in Section 116275 of the Health and Safety Code.

20 (q)

(w) "Recycled water" means recycled water, as defined in subdivision (n) of Section 13050.

(r

- (x) "Regional water resources management" means sources of supply resulting from watershed-based planning for sustainable local water reliability or any of the following alternative sources of water:
 - (1) The capture and reuse of stormwater or rainwater.
- 29 (2) The use of recycled water.
 - (3) The desalination of brackish groundwater.
 - (4) The conjunctive use of surface water and groundwater in a manner that is consistent with the safe yield of the groundwater basin.

34 (s)

- (y) "Reporting period" means the years for which an urban retail water supplier reports compliance with the urban water use targets.
- (z) "Turf" has the same meaning as defined in Section 491 of Title 23 of the California Code of Regulations.

39 (t)

—7— AB 1572

(aa) "Urban retail water supplier" means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

(ab) "Urban water supplier" has the same meaning as defined in Section 10617.

(u)

(ac) "Urban water use objective" means an estimate of aggregate efficient water use for the previous year based on adopted water use efficiency standards and local service area characteristics for that year, as described in Section 10609.20.

(V)

(ad) "Urban water use target" means the urban retail water supplier's targeted future daily per capita water use.

(w)

- (ae) "Urban wholesale water supplier," means a water supplier, either publicly or privately owned, that provides more than 3,000 acre-feet of water annually at wholesale for potable municipal purposes.
- SEC. 3. Chapter 2.5 (commencing with Section 10608.14) is added to Part 2.55 of Division 6 of the Water Code, to read:

Chapter 2.5. Nonfunctional Turf

- 10608.14. (a) The use of potable water for the irrigation of nonfunctional turf located on commercial, industrial, municipal, institutional, and multifamily residential properties is prohibited as of the following dates:
- (1) All properties owned or leased by the Department of General Services, beginning January 1, 2026.
- (2) All commercial, industrial, municipal, and institutional properties, except those specified in paragraph (4), beginning January 1, 2027.
- (3) All multifamily residential properties, except those specified in paragraph (4), beginning January 1, 2028.
- (4) All multifamily residential affordable housing properties and all municipal properties in a disadvantaged community, beginning January 1, 2029.

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(b) The board may extend the compliance date for certain persons, institutions, and businesses by regulation.

- (c) The board shall develop and adopt regulations no later than July 1, 2025, that shall establish all of the following:
- (1) Allowances for compliance extensions, including economic hardship, critical business need, and any other categories the board determines are essential to public health and safety.
 - (2) Methods of compliance certification.
- (3) Reporting requirements for an urban water supplier and public water system.
- (d) Regulations governing the terms and conditions of water service adopted by urban retail water suppliers shall include the requirements of subdivision (a) no later than January 1, 2026.
- (e) (1) An owner of commercial, industrial, municipal, and institutional property with more than 5,000 square feet of irrigated area shall certify, commencing June 30, 2028, and every three years thereafter, that their property is in compliance with the requirements of this chapter.
- (2) An owner of a multifamily residential property with more than 5,000 square feet of irrigated area shall certify, commencing June 30, 2029, and every three years thereafter, that their property is in compliance with the requirements of this chapter.
- (f) Noncompliance by a person or entity with this chapter or regulations adopted thereunder shall be subject to civil liability and penalties set forth in Section 1846, or to civil liability and penalties imposed by an urban retail water supplier pursuant to a locally adopted regulation.
- (g) An urban water supplier, city, county, or city and county may enforce the provisions of this chapter.
- (h) The Public Utilities Commission shall, through a rulemaking proceeding, or decisions in general rate cases, before January 1, 2026, set penalty amounts for investor-owned water companies that violate the requirements of this chapter.
- (i) (1) Beginning July 1, 2028, the board, in collaboration with the department, and with assistance from urban water suppliers, shall annually conduct a compliance audit for two of the state's hydrologic regions, so that all of the state's hydrologic regions receive an audit once every five years. The audit shall include all of the following:

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(A) Visual inspections of commercial and industrial properties known to have large lots and significant landscaping.

- (B) Visual inspections of nonresidential properties with extraordinarily high water use.
- (C) Visual inspections of addresses that have been the subject of water waste complaints in the past year.
- (2) Visual inspections shall be conducted without entry to nonpublic properties or premises.
- (3) The board and the department shall post the audit data on their respective internet websites, including both of the following:
 - (A) Number of inspections conducted by property type.
 - (B) Number of violations identified.

- (4) An urban water supplier shall provide to the board information to facilitate compliance audits through the reporting mechanism established pursuant to Section 116530 of the Health and Safety Code.
- (j) The department shall, using funds appropriated for water conservation and integrated regional water management, prioritize financial assistance for nonfunctional turf replacement to water suppliers serving disadvantaged communities and to owners of affordable housing.
- (k) The department shall utilize the saveourwater.com internet website and outreach campaign to provide information and resources on converting nonfunctional turf to native vegetation.
- (*l*) The department shall analyze and quantify how compliance with this chapter supports the goal of reducing reliance on the Sacramento-San Joaquin Delta as directed by Division 35 (commencing with Section 85000).
- (m) The division shall, in consultation with the Department of Education, disseminate information on native and drought-tolerant plants that support vibrant ecosystems, including pollinators, in schools serving kindergarten and grades 1 through 12.
- (n) The division's vice president shall, no later than June 30, 2026, report to the Senate Committee on Environmental Quality and the Assembly Committee on Water, Parks, and Wildlife on progress in implementing this chapter.

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- 1 (o) The Governor's Office of Business and Economic
- Development shall support small and minority-owned businesses that provide services that advance compliance with this chapter.

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ACTION ITEM April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre Staff Contact: Heather Baez

Interim General Manager

SUBJECT: SB 366 (CABALLERO) – THE CALIFORNIA WATER PLAN: LONG-TERM

SUPPLY TARGETS

STAFF RECOMMENDATION

Staff recommends the Board of Directors vote to adopt a support position on SB 366 (Caballero) and join CMUA's coalition letter and outreach efforts.

BILL SUMMARY

Senate Bill 366 would require the Department of Water Resources (DWR) in coordination with the California Water Commission, the State Water Resources Control Board, other state and federal agencies as appropriate, and the stakeholder advisory committee to develop a comprehensive plan for addressing the state's water needs and reforming the California Water Plan to identify and support a development target of 15 million acre-feet of new water supply by 2050, with an interim target of 10 million acre-feet by 2040.

The bill would require the plan to provide recommendations and strategies to ensure enough water supply for all beneficial uses, and to include specified components, including an economic analysis and a long-term financing plan. In addition, it would require DWR to develop the long-term financing plan to meet the water supply targets and include the final financing plan as part of each update.

NEED FOR THIS PROPOSAL

California is in a race to adjust to significantly changing hydrology associated with climate change. Pressured by multi-year droughts, floods and other intensifying climate events, California's aging water infrastructure and facilities are unable to keep pace, leaving groundwater basins over-drafted, loss of groundwater production, water quality degraded,

Budgeted (Y/N): n/a	Budgeted amount: n/a		Core X	Choice			
Action item amount: None		Line item:					
Fiscal Impact (explain if unbudgeted):							

land fallowed, and severe cutbacks to the State's water delivery systems and local supplies. Every sector in California is affected and bold changes are necessary to address deficiencies and adequately serve the state's population along with environmental, agricultural and business needs.

Recently, the State has taken steps to move California toward sustainability including a major investment of over \$8 billion in the past two years for water projects. The Newsom Administration's recently released "Water Supply Strategy: Adapting to a Hotter, Drier Future," outlines multiple steps and goals for ensuring the State has sufficient water in the future to meet our needs. But this plan is not in statute and is not financed. More is needed.

ARGUMENTS IN SUPPORT

SB 366 would revise and recast the California Water Plan statute, updating its provisions to address the extreme climate impacts of the 21st century. As part of this modernization, the bill would establish long-term water supply targets for the State to achieve, require a financing plan, and would update the requirement that state agencies develop a plan to achieve those targets, in consultation with local water agencies, wastewater service providers, irrigation districts, and other stakeholders recognizing the state's diverse regional needs. The targets of 15 million acre-feet of new water supply by 2050 and 10 million acrefeet by 2040 would complement and amplify Governor Newsom's Water Supply Strategy, and ensure the State establishes and maintains these water supply targets beyond any single Administration.

ARGUMENTS IN OPPOSITION

None on file.

BOARD OPTIONS

Option #1

Adopt a support position on SB 366 and join CMUA's coalition and outreach efforts.

Fiscal Impact: If enacted, this measure could potentially save public agencies time and money as they could finish projects sooner and more efficiently.

Option #2

Take no action

Fiscal Impact: Same as above

STAFF RECOMMENDATION

Option #1

ATTACHED:

SB 366 Full Text

Introduced by Senator Caballero

(Coauthor: Assembly Member Blanca Rubio)

February 8, 2023

An act to amend Section 10004.6 of, to repeal Sections 10004.5 and 10013 of, and to repeal and add Sections 10004 and 10005 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as amended, Caballero. The California Water Plan: long-term supply targets.

Existing law requires the Department of Water Resources to update every 5 years the plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state, which is known as the California Water Plan. Existing law requires the department to include a discussion of various strategies in the plan update, including, but not limited to, strategies relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, water transfers, and alternative pricing policies that may be pursued in order to meet the future needs of the state. Existing law requires the department to establish an advisory committee to assist the department in updating the plan.

This bill would make legislative findings and declarations and state the intent of the Legislature to enact future legislation that modernizes the California Water Plan, including the establishment of long-term water supply targets.

This bill would require the department to instead establish a stakeholder advisory committee, to expand the membership of the

SB~366 -2-

committee to include tribes and environmental justice interests, to prohibit a member of the committee from serving longer than the development of 2 updates, and to require the committee to meet a minimum of 4 times annually. The bill would require the department, in coordination with the California Water Commission, the State Water Resources Control Board, other state and federal agencies as appropriate, and the stakeholder advisory committee to develop a comprehensive plan for addressing the state's water needs and meeting specified water supply targets established by the bill for purposes of "The California Water Plan." The bill would require the plan to provide recommendations and strategies to ensure enough water supply for all beneficial uses. The bill would require the plan to include specified components, including an economic analysis and a long-term financing plan. The bill would require the department to develop the long-term financing plan, as provided, to meet the water supply targets and include the final financing plan as part of each update. The bill would require the Director of Water Resources to provide an oral and written report to the Legislature, each year by May 1, regarding the progress made toward meeting the water supply targets, as specified. The bill would also require the department to conduct public workshops to give interested parties an opportunity to comment on the plan and to post the preliminary draft of the plan on the department's internet website. *The bill would include findings and declarations relating to water supply* and climate change.

Vote: majority. Appropriation: no. Fiscal committee: no-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the 2 following:
- 3 (a) To thrive as a state, California needs a reliable supply of 4 water for urban, agricultural, and environmental uses that is 5 resilient to climate change.
- 6 (b) California's existing water usage is highly reliant on 7 capturing the snow melt on an annual basis. That water is stored 8 in lakes, reservoirs, and groundwater basins and is then
- 9 transported around the state for environmental, residential,
- 10 business, and agricultural use when needed.

3 SB 366

(c) California has the most intricate and elaborate system of water conveyance in the world.

- (d) Dependent on the extent of drought or flood conditions, the Department of Water Resources has calculated that the volume of water used by people in California for agricultural, urban, and environmental purposes ranges from 60,000,000 acre-feet per year to 90,000,000 acre-feet per year.
- (e) Per capita water use has declined over time, thanks to a conservation ethic encouraged by water agencies and other stakeholders, water-saving indoor plumbing fixtures and appliances, better leak detection, and efforts to reduce outdoor water use.
- (f) Water use also has significantly declined in the agricultural sector thanks to proactive steps taken by irrigation districts and farmers, such as installing drip irrigation systems.
- (g) California is experiencing significant impacts of a changing climate on our water supply systems.
- (h) According to the Department of Water Resources, hotter and drier weather is estimated to diminish our existing water supply even further and likely by 10 percent.
- (i) A 10-percent loss could mean the disappearance of about 6,000,000 acre-feet to 9,000,000 acre-feet of water supply.
- (j) Many rivers, lakes, and estuaries are being impacted by declining water quality, including increases in harmful algal blooms.
- (k) The California central valley has a groundwater overdraft of 2,000,000 to 3,000,000 acre-feet of water.
- (l) Following more than two decades of "megadrought" in the Colorado Basin, reservoir levels are so low that supply cuts are likely.
- (m) California's precipitation is changing from seasonal snow in the Sierra to periods of substantial rainfall, including from atmospheric rivers.
- (n) The shift to drier dry years and wetter wet years makes it imperative that the state of California develop comprehensive wet year strategies that take full advantage of times of abundance, while also ensuring public safety from floods.
- (o) It is imperative that California capture more water from atmospheric rivers and other storms that occur during dry years to help fill groundwater basins and surface storage.

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(p) California is the nation's agricultural powerhouse, accounting for 12 percent of agricultural production in 2021, including more than 70 percent of the nation's fruits and nuts.

- (q) The agricultural sector produces annual revenues of more than \$50 billion, employs more than 420,000 people, and supports large food and beverage processing industries.
- (r) According to the Department of Water Resources, there is the potential for more than 13,000,000 acre-feet of groundwater recharge annually with more than 2,5000,000 acre-feet being possible using existing infrastructure.
- (s) The Department of Water Resources describes a statewide capacity in groundwater basins in the range of 1,000,000,000 acre-feet or approximately 20 times the total surface water storage capacity statewide.
- (t) California is the home to cutting-edge job-creating industries, such as those in Silicon Valley and southern California's biotech industry.
- (u) Local and regional water suppliers are at the forefront of implementing projects to build resiliency, but need additional support from the state and federal governments through funding and regulatory frameworks that are adapted for the new climate reality.
- (v) It is essential for our economy, environment, and well-being that California increases the resilience of the state's water supplies.
- (w) Governor Gavin Newsom released "California's Water Supply Strategy: Adapting to a Hotter, Drier Future" in August 2022 that began to outline strategies for increasing California's water supply and streamlining approvals, but California must make a historic change in the state's comprehensive water plan and how water is provided for environmental, residential, business, and agricultural uses.
- SEC. 2. Section 10004 of the Water Code is repealed.
- 10004. (a) The plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state which is set forth and described in Bulletin
- 36 No. 1 of the State Water Resources Board entitled "Water
- 37 Resources of California," Bulletin No. 2 of the State Water
- 38 Resources Board entitled, "Water Utilization and Requirements
- 39 of California," and Bulletin No. 3 of the department entitled, "The
- 40 California Water Plan," with any necessary amendments,

5 SB 366

supplements, and additions to the plan, shall be known as "The California Water Plan."

- (b) (1) The department shall update The California Water Plan on or before December 31, 2003, and every five years thereafter. The department shall report the amendments, supplements, and additions included in the updates of The California Water Plan, together with a summary of the department's conclusions and recommendations, to the Legislature in the session in which the updated plan is issued.
- (2) The department shall establish an advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, and environmental interests, and other interested parties, to assist the department in the updating of The California Water Plan. The department shall consult with the advisory committee in carrying out this section. The department shall provide written notice of meetings of the advisory committee to any interested person or entity that request the notice. The meetings shall be open to the public.
- (3) The department shall release a preliminary draft of The California Water Plan, as updated, upon request, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these comments in the preparation of the final publication of The California Water Plan, as updated.
 - SEC. 3. Section 10004 is added to the Water Code, to read:
- 10004. (a) The department, in coordination with the California Water Commission, the board, other state and federal agencies as appropriate, and the stakeholder advisory committee outlined in subparagraph (A) of paragraph (3) of subdivision (f) shall develop a comprehensive plan for addressing the state's water needs and meeting the water supply targets in subdivision (c), which shall be known as "The California Water Plan." The plan shall provide recommendations and strategies to ensure enough water supply for all beneficial uses.
- (b) It is hereby declared that the people of the state have a primary interest in the orderly and coordinated control, protection, conservation, development, and utilization of the water resources

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of the state by all individuals and entities and that it is the policy of the state that The California Water Plan, with any necessary amendments, supplements, and additions to the plan, is accepted as the master plan that guides the orderly and coordinated control, protection, conservation, development, management, and efficient utilization of the water resources of the state.

- (c) The department shall include in the plan a water supply planning target of 15,000,000 acre-feet of water by 2050 with an interim target of 10,000,000 acre-feet of water by 2040 to ensure water supply reliability for California's future economic and environmental sustainability. The target shall include new and expanded supplies, including from the strategies listed in subparagraph (A) of paragraph (1) of subdivision (d).
- (d) In addition to the water supply planning targets in subdivision (c), each update of the plan shall include the following components:
- (1) (A) A discussion of various strategies, including, but not limited to, those relating to the development of new surface and groundwater storage facilities, water conservation, water recycling, desalination, conjunctive use, improved regional and statewide conveyance, stormwater capture, and water transfers that may be pursued in order to meet the water supply targets in subdivision (c). The department shall include in the plan a discussion of the potential advantages and disadvantages of each strategy, how to maximize the strategy for long-term sustainability, how innovation and research can spur the implementation of each strategy, and an identification of all federal and state permits, approvals, or entitlements that may be required in order to implement the various components of the strategy.
- (B) In consultation with the advisory committee outlined in subparagraph (A) of paragraph (3) of subdivision (f), the department shall develop and make recommendations for specific actions that shall be taken to streamline those permits and approvals.
- (C) In carrying out this chapter, a public water system, irrigation district, or wastewater service provider shall not be required to implement a specific strategy or project.
- (2) A study to support the water supply targets and to recommend programs, policies, and facilities to achieve those

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1 targets with assumptions and estimates as outlined in Section 2 10004.6.

- (3) An economic analysis of the costs and impacts to the state if it has inadequate water supplies to meet current demand for all sectors of the economy and environment in the next 10-, 20-, and 30-year scenarios. The analysis shall include a range of water supply shortfall projections and water supply shortage scenarios for urban and agricultural water suppliers using water suppliers' existing planning documents, such as water shortage contingency plans, urban water management plans, and agricultural water management plans. The analysis also shall include the impacts of possible rationing for various agricultural, industrial, commercial, and residential customer classes.
- (4) A report on the development of regional and local water projects within each hydrologic region of the state to improve water supplies to meet municipal, agricultural, and environmental water needs and meet the water supply targets.
 - (5) A long-term financing plan as outlined in Section 10005.
- (e) The declaration set forth in subdivision (b) does not constitute approval for the construction of specific projects or routes for transfer of water, or for financial assistance, by the state without further legislative action, nor shall the declaration be construed as a prohibition of the development of the water resources of the state by any entity.
- (f) (1) The department shall update The California Water Plan on or before December 31, 2028, and every five years thereafter. The department shall report the amendments, supplements, and additions included in the updates of The California Water Plan, together with a summary of the department's conclusions and recommendations, to the Legislature, in compliance with Section 9795 of the Government Code, in the session in which the updated plan is issued.
- (2) The director shall provide an oral and written report to the Legislature, in accordance with Section 9795 of the Government Code, each year by May 1, regarding the progress made toward meeting the water supply targets in an informational hearing of the relevant committees. The report shall include the list of recommended actions that require legislative intervention and those that can be implemented by the department or other state

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1 agencies. The written report shall be posted on the department's
2 internet website.

- (3) (A) The department, in consultation with the California Water Commission, shall establish a stakeholder advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, tribes, environmental justice and environmental interests, and other interested parties, to provide substantiative input to assist the department in updating The California Water Plan, including the financing plan outlined in Section 10005. The department shall consult with and consider recommendations from the advisory committee in carrying out this section. The department shall accept applications for the stakeholder advisory committee before each update and ensure a balanced representation of members. A member of the advisory committee shall not serve for longer than the development of two updates. The advisory committee shall meet a minimum of four times annually. The department shall provide written notice of meetings of the advisory committee to any interested person or entity that requests the notice. The meetings shall be open to the public.
 - (B) The department also shall seek out and consider all relevant information from retail and wholesale water agencies, agriculture, business, tribes, environmental and environmental justice communities, and any other communities potentially impacted by the plan and from researchers and experts on climate science, climate science solutions, water storage, water conveyance, and environmental protection.
 - (4) In preparing any update of The California Water Plan, the department shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The department shall conduct a portion of these workshops in regions of the state that have been impacted the most by drought and other weather extremes, including, but not limited to, communities with minority populations, communities with low-income populations, or both.
 - (5) The department shall release a preliminary draft of The California Water Plan, as updated, upon request, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the

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preliminary draft. The department also shall post the preliminary draft on the department's internet website. The department shall consider these comments in the preparation of the final publication of The California Water Plan, as updated.

SEC. 4. Section 10004.5 of the Water Code is repealed.

10004.5. As part of the requirement of the department to update The California Water Plan pursuant to subdivision (b) of Section 10004, the department shall include in the plan a discussion of various strategies, including, but not limited to, those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state. The department shall also include a discussion of the potential for alternative water pricing policies to change current and projected uses. The department shall include in the plan a discussion of the potential advantages and disadvantages of each strategy and an identification of all federal and state permits, approvals, or entitlements that are anticipated to be required in order to implement the various components of the strategy.

- SEC. 5. Section 10004.6 of the Water Code is amended to read: 10004.6. (a) As part of updating The California Water Plan every five years pursuant to subdivision (b) of Section 10004, the department shall conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs.
- (b) The department shall consult with the advisory committee established pursuant to subdivision (b) of Section 10004 in carrying out this section.

(c)

10004.6. (a) On or before January 1, 2002, and one year-prior to before issuing each successive update to The California Water Plan, the department shall release a preliminary draft of the assumptions and other estimates upon which the study will be based, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these documents when adopting the final assumptions and estimates for the study. For the purpose of carrying out this subdivision, the

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1 department shall release, at a minimum, assumptions and other 2 estimates relating to all of the following:

- (1) Basin hydrology, including annual rainfall, estimated unimpaired streamflow, depletions, and consumptive uses.
- (2) Groundwater supplies, including estimates of sustainable yield, supplies necessary to recover overdraft basins, and supplies lost due to pollution and other groundwater contaminants.
- (3) Current and projected land use patterns, including the mix of residential, commercial, industrial, agricultural, and undeveloped lands.
- (4) Environmental water needs, including regulatory instream flow requirements, nonregulated instream uses, and water needs by wetlands, preserves, refuges, and other managed and unmanaged natural resource lands.
- 15 (5) Current and projected population.
- 16 (6) Current and projected water use for all of the following:
- 17 (A) Interior uses in a single-family dwelling.
- 18 (B) Exterior uses in a single-family dwelling.
- 19 (C) All uses in a multifamily dwelling.
- 20 (D) Commercial uses.
- 21 (E) Industrial uses.
 - (F) Parks and open spaces.
- 23 (G) Agricultural water diversion and use.
 - (7) Evapotranspiration rates for major crop types, including estimates of evaporative losses by irrigation practice and the extent to which evaporation reduces transpiration.
 - (8) Current and projected adoption of urban and agricultural conservation practices.
 - (9) Current and projected supplies of water provided by water recycling and reuse.
 - (d) The department shall include a discussion of the potential for alternative water pricing policies to change current and projected water uses identified pursuant to paragraph (6) of subdivision (c).
 - (10) Climate change impacts by region.
 - (e) Nothing in this section requires or prohibits
- (b) This section does not require or prohibit the department
 from updating any data necessary to update The California Water
- 39 Plan pursuant to subdivision (b) (f) of Section 10004.
- 40 SEC. 6. Section 10005 of the Water Code is repealed.

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10005. (a) It is hereby declared that the people of the state have a primary interest in the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state by all individuals and entities and that it is the policy of the state that The California Water Plan, with any necessary amendments, supplements, and additions to the plan, is accepted as the master plan which guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state.

- (b) The declaration set forth in subdivision (a) does not constitute approval for the construction of specific projects or routes for transfer of water, or for financial assistance, by the state, without further legislative action, nor shall the declaration be construed as a prohibition of the development of the water resources of the state by any entity.
 - SEC. 7. Section 10005 is added to the Water Code, to read:
- 10005. (a) The department shall develop a long-term financing plan to meet the water supply targets and include the final financing plan as part of each update.
 - (b) The financing plan shall do all of the following:
- (1) Analyze a variety of financing mechanisms, including use of general fund moneys, general obligation bond fund moneys, and other potential sources of financing to meet the water supply targets in The California Water Plan and provide necessary investments to ensure a water resilient state.
- (2) Consider the cost-effectiveness of various water supply options and compare those costs to the economic costs of supply shortages on various customer classes and the California economy.
- (3) Recommend actions to be taken by the department, the board, or other state agencies to streamline access to funding for projects in all areas of the state that will help achieve the water supply targets, including a coordinated application process across state agencies, expedited funding guidelines, and an annual report listing projects funded by state agencies with the resulting acre-feet produced.
- (c) The California Water Commission shall conduct a series of public workshops to give interested parties an opportunity to comment on the financing plan. The commission shall conduct a portion of these workshops in regions of the state that have been

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impacted the most by drought or other weather extremes, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(d) The financing plan shall recognize that public water systems, irrigation districts, and wastewater service providers utilize different rate structures and avoid mandates for revising those rates or a specific level of investment from public water systems, irrigation districts, or wastewater service providers.

SEC. 8. Section 10013 of the Water Code is repealed.

10013. The department, as a part of the preparation of the department's Bulletin 160-03, shall include in the California Water Plan a report on the development of regional and local water projects within each hydrologic region of the state, as described in the department's Bulletin 160-98, to improve water supplies to meet municipal, agricultural, and environmental water needs and minimize the need to import water from other hydrologic regions. The report shall include, but is not limited to, regional and local water projects that use technologies for desalting brackish groundwater and ocean water, reclaiming water for use within the community generating the water to be reclaimed, the construction of improved potable water treatment facilities so that water from sources determined to be unsuitable can be used, and the construction of dual water systems and brine lines, particularly in connection with new developments and when replacing water piping in developed or redeveloped areas.

SECTION 1. The Legislature finds and declares all of the following:

- (a) To thrive as a state, California needs a reliable supply of water for urban, agricultural, and environmental uses that is completely resilient to climate change.
- (b) California's existing water level is highly reliant on capturing the snow melt on an annual basis. That captured water is stored in lakes, reservoirs, and groundwater basins, and is then transported around the state for environmental, residential, business, and agricultural use when needed.
- (e) California has the most intricate and elaborate system of water conveyance in the world.
- (d) The volume of water used by people in California for agriculture, urban, and environmental purposes ranges from 60,000,000 to 90,000,000 acre-feet per year.

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(e) Per-capita water use has declined over time, thanks to water-saving indoor plumbing fixtures and appliances, better leak detection, development of potable and nonpotable water reuse projects, and efforts to reduce outdoor water use.

- (f) Over the last two years, scientists and water managers have been alarmed by the accelerating impacts of the warming climate on our water supply.
- (g) Hotter and drier weather is estimated to diminish our existing water supply by 10 percent to 20 percent.
- (h) A loss of 10 percent of our existing water supply due to hotter and drier conditions could mean the disappearance of about 6,000,000 to 9,000,000 acre-feet of water.
- (i) For comparison's sake, California's largest reservoir, the Shasta Reservoir, holds 4,500,000 acre-feet of water.
- (j) Many rivers, lakes, and estuaries are being impacted by declining water quality, including increases in harmful algae blooms.
- (k) The California central valley has a groundwater overdraft of 2,000,000 to 3,000,000 acre-feet of water.
- (1) Following more than two decades of "megadrought" in the Colorado River Basin, reservoir levels are so low that near-term supply cuts are likely.
- (m) California's precipitation is changing from seasonal snow in the Sierra Nevada Mountains to periods of substantial rainfall, including atmospheric rivers.
- (n) The shift to drier dry years and wetter wet years makes it imperative that the State of California develop comprehensive wet-year strategies that take full advantage of times of abundance, while also ensuring public safety from floods.
- (o) It is imperative that California capture more water from atmospheric rivers and other storms that occur during dry years to help fill groundwater basins and surface storage.
- (p) California is the nation's agricultural powerhouse, accounting for 12 percent of the nation's agricultural production in 2021, including more than 70 percent of the nation's fruits and nuts.
- (q) The agriculture sector produces annual revenues of more than \$50 billion, employs more than 420,000 people, and supports large food and beverage processing industries.
- (r) According to the Department of Water Resources, there is the potential for more than 13,000,000 acre-feet of groundwater

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recharge annually, with more than 2,500,000 acre-feet being possible using existing infrastructure.

- (s) The Department of Water Resources describes a statewide eapacity in groundwater basins in the range of 1,000,000,000 acre-feet or approximately 20 times the total surface water storage eapacity statewide.
- (t) California is home to cutting-edge, job-creating industries such as those in Silicon Valley and southern California's biotechnology industry.
- (u) It is essential for our economy, environment, and well-being that California increases the resilience of the state's water supplies.
- (v) California must make a historic change in how water is provided for environmental, residential, business, and agricultural uses.
- SEC. 2. It is the intent of the Legislature to enact future legislation that modernizes the California Water Plan, including the establishment of long-term water supply targets.



ACTION ITEM April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre Staff Contact: Heather Baez

Interim General Manager

SUBJECT: AB 460 (BAUER-KAHAN), AB 1337 (WICKS), & SB 389 (ALLEN): WATER

RIGHTS

STAFF RECOMMENDATION

Staff recommends the Board of Directors vote to adopt an oppose position on AB 460 (Bauer-Kahan), AB 1337 (Wicks), and SB 389 (Allen), and join ACWA and CMUA's coalition and outreach efforts.

BILL SUMMARY

Assembly Bill 460 (Bauer-Kahan) would authorize the State Water Resources Control Board (SWRCB) to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related provisions of law. Any person or entity that violates the interim relief order issued by the SWRCB would be liable for a civil penalty not to exceed \$10,000 for each day in which a violation occurs and \$5,000 for each acre-foot of water diverted in violation of the interim relief order.

Assembly Bill 1337 (Wicks) would authorize the SWRCB to adopt regulations for various water conservation purposes, including, but not limited to, to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and to implement these regulations through orders curtailing the diversion or use of water under any claim of right. The bill would require the board to provide notice and an opportunity to be heard before issuing an order, except where an opportunity to be heard before the issuance of an order would be impractical given the likelihood of harm to the purposes of the various water conservation regulations. Under AB 1337, any person or entity may be civilly liable for a violation of any regulation or order issued by the SWRCB in an amount not to exceed \$1,000 for each day in which the violation has occurred and

Budgeted (Y/N): n/a	Budgeted amount: n/a		Core X	Choice				
Action item amount: None		Line item:						
Fiscal Impact (explain if unbudgeted):								

\$2,500 for each acre-foot of water diverted or used in violation of the applicable requirement.

Senate Bill 389 (Allen) would authorize the SWRCB to investigate the diversion and use of water from a stream system to determine whether the diversion and use are based upon appropriation, riparian right, or other basis of right.

ARGUMENTS IN SUPPORT

AB 460 stems from a recommendation in the Planning and Conservation League's (PCL) recent report, Updating California Water Laws to Address Drought and Climate Change (Report). According to the PCL Report, existing law does not include any specific authority or administrative procedures to provide for interim relief during the pendency of an enforcement action. The Report argues that without the ability to impose interim relief, irreparable damage can continue to occur to the environment and other water right holders during the length of an adjudicative proceeding. Between procedural requirements with particular periods that must be met before final action can be taken, and compliance with CEQA, the State Water Board is routinely unable to take swift action on urgent matters.

The idea behind AB 1337 is better management and utilization of water for the public good and providing the SWRCB with greater ability to clarify uncertain water rights.

SB 389 also comes from a recommendation in the PCL Report. It argues the SWRCB lacks the tools for promptly investigating and determining if senior water right claims are inflated or are reflective of the amounts that the claimants have the right to divert and use. To address this gap in the SWRCB's authority, the Report recommended amending the Water Code to authorize the SWRCB to selectively investigate and determine whether a water right claimant, diverter, or user is diverting or using water under a defensible claim of right.

ARGUMENTS IN OPPOSITION

AB 460 would prescribe enforcement authority that is vastly different from current authority and sidesteps fundamental constitutional due process protections. There is already a process where the SWRCB can obtain short-term injunctive relief by referring matters to the Attorney General. The scope of actions this bill targets requires fact-finding and balancing — which is a role the state has long entrusted to courts as neutral adjudicators to accomplish.

AB 1337 goes far beyond managing scarce supplies during drought and is a vast expansion of the SWRCB's authority over riparian and pre-1914 water right holders in all hydrologic conditions. The existing legal framework for emergency drought regulations is consistent with California water law and the law of priority. This bill would allow the SCWRB to do by regulation what it currently can only do by adjudication, thus raising concerns with due process and fact-finding specific to each circumstance. There needs to remain a process for people that will be impacted by any decision to be involved by providing evidence and being heard by a neutral arbiter. AB 1337 eliminates this protection while providing stiff financial penalties for the violation of any regulation.

SB 389 also greatly expands the SWRCB's authority to impact all water rights in the State. This bill has two concerning pieces. First, this bill shifts the burden of proof of showing water rights are valid and are still being used onto the water rights holder by a preponderance of the evidence. Second, the forfeiture element of this bill differs from common law forfeiture. The authority envisioned in this bill would result in a severe diminishment of people's water rights and could impact a water agency's ability to plan for the future. Worse, this bill would push water users to use as much water as possible to reduce the risk of forfeiture, at a time when the State should instead be encouraging even greater water conservation.

The bills essentially empower the SWRCB to impose what amounts to a regulatory taking of all or a portion of a water right, and they do that with little to no due process.

They will cause unnecessary confusion and uncertainty for the water community and are not the right way to tackle concerns with the water rights system.

BOARD OPTIONS

Option #1

 Adopt an oppose position on AB 460, AB 1337 and SB 389 and join ACWA and CMUA's coalition and outreach efforts.

Option #2

Take no action

STAFF RECOMMENDATION

Option #1

ATTACHED:

- AB 460 Full Text
- AB 1337 Full Text
- SB 389 Full Text

Introduced by Assembly Member Bauer-Kahan

February 6, 2023

An act to add Chapter 3.6 (commencing with Section 1115) to Part 1 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 460, as introduced, Bauer-Kahan. State Water Resources Control Board: interim relief.

The California Constitution requires the reasonable and beneficial use of water. Under the public trust doctrine, the State Water Resources Control Board, among other state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public trust whenever feasible. The board and the California regional water quality control boards are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available upon appropriation by the Legislature for the administration of the board's water rights program.

Existing law requires that the owner of any dam allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam, as specified.

This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related

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provisions of law. The bill would provide that a person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty in an amount not to exceed the sum of \$10,000 for each day in which a violation occurs and \$5,000 for each acre-foot of water diverted in violation of the interim relief order. The bill would require these funds to be deposited in the Water Rights Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.6 (commencing with Section 1115) is 2 added to Part 1 of Division 2 of the Water Code, to read:

Chapter 3.6. Interim Relief

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- 1115. (a) The board may issue an interim relief order in appropriate circumstances, after notice and an opportunity for a hearing, in adjudicative proceedings to apply or enforce any of the following:
 - (1) Section 2 of Article X of the California Constitution.
 - (2) The public trust doctrine.
- (3) Water quality objectives or principals and guidelines adopted under subdivision (b) of Section 13142, Section 13149, Section 13170, or 13241.
- (4) The requirements set forth in permits, licenses, certificates, and registrations issued under Part 2 (commencing with Section 1200), including actions that invoke the board's reserved jurisdiction or continuing authority.
 - (5) Section 5937 of the Fish and Game Code.
- (b) The board may commence an interim relief proceeding on its own motion or upon the petition of an interested party. The board shall not accept a petition that does not include all of the following information:
 - (1) The name and mailing address of the petitioner.
- (2) A description of the specific diversion or use of water that the petitioner is contesting.
- (3) A statement of the petitioner's interest in the contested diversion or use of water.

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(4) Identification of the adjudicative proceedings in which interim relief is requested.

- (5) A description of the harm or injury complained of.
- (6) An explanation of the nexus between the diversion or use and the alleged harm or injury.
 - (7) The relief the petitioner is requesting.

- (8) A statement of reasons explaining why the relief is justified.
- (9) Any additional information that the board may deem appropriate.
- (c) The board may dismiss a petition that does not raise substantial issues that are appropriate for review.
- (d) Unless the board concludes that consideration of the matter is urgent, the board shall provide notice at least 20 days before the hearing date. In its discretion, the board may provide that the evidence to be considered shall be based on declarations under penalty of perjury, the testimony of witnesses at the hearing, or both. The board shall also consider oral or written legal argument that is provided in a timely manner by the parties. The board may establish a schedule for filing declarations and written arguments.
- (e) If the board issues an interim relief order without providing at least 20 days' notice before the hearing date, or if the board issues an interim relief order after considering the declaration of any witness who is not available for cross-examination, the interim relief order shall remain in effect for a period not to exceed 180 days unless the party to whom the interim relief order is issued agrees to an extension of that period. This subdivision is not a limitation on the authority of the board to issue any additional interim relief in response to changed circumstances.
- (f) In determining whether to provide interim relief, and the nature and extent of the relief, the board shall consider all relevant circumstances, including the effects on other legal users of water, fish, wildlife, and other instream beneficial uses, the extent of harm, the necessity for relief, and any appropriate measures to minimize any adverse effects of providing interim relief. Sufficient grounds shall exist for interim relief upon the same showing as would be required for a superior court to grant a preliminary injunction.
- 1115.5. (a) As part of the interim relief order, the board may require a water diverter or user to do any of the following:
 - (1) Cease all harmful practices.

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(2) Employ specific procedures and operations to prevent or mitigate the harm.

- (3) Complete technical and monitoring work and prepare and submit reports on that work, including draft environmental documentation.
- (4) Participate in, and provide funding for, studies that the board determines are reasonably necessary to evaluate the impact of the diversion or use that is the subject of the adjudicative proceeding.
- (5) Reimburse the board's expenses for the preparation of any necessary environmental documentation.
 - (6) Take other required action.
- (b) The board shall set a schedule for compliance with any interim relief order.
- 1116. If the board orders interim relief, the board shall set a schedule, as soon as reasonably possible, for the board's consideration of permanent relief. The schedule shall include actions that the water diverter or user is required to undertake to ensure timely consideration of the permanent relief. The actions required of the water diverter or user may include, but are not limited to, the completion of technical and monitoring work, the preparation and submittal of reports on that work, including draft environmental documentation, and the reimbursement of the board's expenses. Any permanent relief shall be granted after notice and an opportunity for a hearing.
- 1116.5. (a) Except as otherwise specified in this section, any interim relief order issued by the board is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code if the board makes either of the following findings:
- (1) Providing interim relief will not have a significant adverse effect on the environment.
- (2) Providing interim relief will result in environmental benefits or prevent harm to environmental resources, and the benefits provided or harm prevented outweighs any adverse effects that may result from providing interim relief. If the board makes a finding pursuant to this paragraph, the board shall also adopt the finding or findings specified in Section 21081 of the Public Resources Code.
- (b) Any findings of the board pursuant to this section shall be supported by substantial evidence in the record. If the board makes

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the findings specified in paragraph (1) of subdivision (a) of Section 21081 of the Public Resources Code, or if the board finds that providing interim relief will not have a significant adverse effect on the environment because a potentially significant adverse effect will be avoided as a result of mitigation incorporated in the board's order, the board shall adopt a reporting and monitoring program in accordance with Section 21081.6 of the Public Resources Code.

- (c) Sections 21167, 21167.1, 21167.4, 21167.5, 21167.6.5, 21167.7, 21167.8, 21168, 21168.5, 21168.9, and 21177 of the Public Resources Code shall apply to any action or proceeding to attack, review, set aside, void, or annul any action or decision of the board pursuant to this chapter on grounds of noncompliance with this section.
- 1117. The board may review and revise any part of an interim relief order at any time after notice to all interested parties and an opportunity for a hearing.
- 1117.5. The issuance or denial of an interim relief order by the board does not alter the burdens of proof or the burdens of coming forward with respect to the board's final decision on the merits in the adjudicative proceeding in which interim relief is requested.
- 1118. This chapter is not a limitation on the jurisdiction of any court or agency over any matter within that court or agency's jurisdiction.
- 1118.5. If a water diverter or user does not comply with an interim relief order, the Attorney General, upon the request of the board, shall petition the superior court for prohibitory or mandatory injunctive relief, as necessary, through the issuance of a temporary restraining order, preliminary injunction, or permanent injunction.
- 1119. (a) (1) Any person or entity that violates an interim relief order issued by the board is liable for a civil penalty not to exceed the sum of the following:
- (A) Ten thousand dollars (\$10,000) for each day in which a violation occurs.
- (B) Five thousand dollars (\$5,000) for each acre-foot of water diverted in violation of the interim relief order.
- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the board, shall petition the superior court to impose the liability. The Superior Court shall impose the civil penalty if it determines by a preponderance of the

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evidence that the water diverter or user subject to the interim relief order has violated the order.

- (3) Civil liability may be imposed administratively by the board pursuant to Section 1055.
- (b) In determining the appropriate amount, the court or board, as the case may be, shall consider all the relevant circumstances, including the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action undertaken by the violator.
- (c) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund.
- (d) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.
- 1119.5. This chapter does not limit any authority held by the board under this code or any other provision of law.

Introduced by Assembly Member Wicks

February 16, 2023

An act to add Chapter 2.5 (commencing Section 1065) to Part 1 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as introduced, Wicks. State Water Resources Control Board: water shortage enforcement.

Existing law establishes the State Water Resources Control Board in the California Environmental Protection Agency and vests the board with various powers and duties, including, among other things, to ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this state. Existing law authorizes the board to adopt emergency regulations if, among other things, the regulations are adopted to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that the lead agency proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect.

AB 1337 -2-

This bill would authorize the board to adopt regulations for various water conservation purposes, including, but not limited to, to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and to implement these regulations through orders curtailing the diversion or use of water under any claim of right. The bill would require the board to provide notice and an opportunity to be heard before issuing an order, except where an opportunity to be heard before the issuance of an order would be impractical given the likelihood of harm to the purposes of the various water conservation regulations. The bill would provide that a person or entity may be civilly liable for a violation of any regulation or order issued by the board pursuant to these provisions in an amount not to exceed \$1,000 for each day in which the violation has occurred and \$2,500 for each acre-foot of water diverted or used in violation of the applicable requirement. The bill would authorize the imposition of this civil liability by the superior court, as specified, or administratively by the board. The bill would provide that a regulation or order issued by the board pursuant to these provisions, or by emergency regulation, is exempt from CEQA.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.5 (commencing with Section 1065) is added to Part 1 of Division 2 of the Water Code, to read:

Chapter 2.5. Water Shortage Enforcement

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1065. The board may adopt regulations for any of the following purposes:

- (a) To prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.
 - (b) To promote water recycling or water conservation.
 - (c) To protect public trust resources.
- (d) To require curtailment of diversions when water is not available under the diverter's priority of right.
- (e) In furtherance of any of the purposes of this section, to require reporting of diversion or use or the preparation of monitoring reports.

-3- AB 1337

1066. (a) The board may implement regulations through orders curtailing the diversion or use of water under any claim of right.

- (b) (1) The board shall provide notice and an opportunity to be heard, except where an opportunity to be heard before the issuance of an order would be impractical given the likelihood of harm to the purposes described in Section 1065, or other relevant circumstances.
- (2) The opportunity to be heard may be tailored to the circumstances, may be a collective rather than individual process, and may be written or oral.
- (3) If the board does not provide an opportunity to be heard before the issuance of an order, the board shall promptly provide the opportunity after the issuance of the order, such as through the petition for reconsideration process pursuant to Chapter 4 (commencing with Section 1120).
- 1067. (a) A person or entity may be civilly liable for a violation of any regulation or order issued under this chapter in an amount not to exceed the sum of the following:
- (1) One thousand dollars (\$1,000) for each day in which the violation has occurred.
- (2) Two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the applicable requirement.
- (b) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.
- (c) Civil liability may be imposed administratively by the board pursuant to Section 1055.
- 1068. A regulation or order issued by the board under this chapter or Section 1058.5 shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
- 1069. This chapter does not limit any authority held by the board under this code or any other law.

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Introduced by Senator Allen

February 9, 2023

An act to add Article 6 (commencing with Section 1860) to Chapter 12 of Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as introduced, Allen. State Water Resources Control Board: determination of water right.

Existing law establishes the State Water Resources Control Board within the California Environmental Protection Agency. Existing law provides generally for the appropriation of water. Existing law provides that it is the intent of the Legislature that the state take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.

This bill would authorize the State Water Resources Control Board to investigate the diversion and use of water from a stream system to determine whether the diversion and use are based upon appropriation, riparian right, or other basis of right, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 6 (commencing with Section 1860) is
- 2 added to Chapter 12 of Part 2 of Division 2 of the Water Code, to
- 3 read:

SB 389 -2-

Article 6. Determination of Basis of Right

1860. The state board may investigate the diversion and use of water from a stream system to determine whether the diversion and use are based upon appropriation, riparian right, or other basis of right.

1861. In furtherance of an investigation authorized pursuant to Section 1860, the state board may issue an information order to a water right claimant, diverter, or user to provide technical reports or other information related to a diversion and use of water, including, but not limited to, all of the following:

- (a) Information in addition to any information required to be reported pursuant to Part 5.1 (commencing with Section 5100).
 - (b) Information related to the basis of the water right claimed.
- (c) Information related to the patent date claimed for the place of use.
- (d) Information related to the notice date of the appropriation and the date of actual delivery of water to beneficial use.
- (e) Information related to prior diversions and use, including direct diversions and diversions to storage.
- (f) Information related to the diversions and use of transferred water.
- 1862. After notice and opportunity for hearing, the state board may issue a decision or order determining the diversion and use basis of right, including the authorized scope of the diversion and use, or may issue a decision or order determining that the diversion and use is not authorized under any basis of right.
- 1863. In determining under this article whether a holder of an appropriative water right has forfeited the right or any portion of the right pursuant to Sections 1240 and 1241, the state board is not required to find the existence of a conflicting claim by any water right holder within the stream system during the period of forfeiture.
- 1864. In any state board proceeding to determine a diversion and use basis of right under this article, the water right claimant, diverter, or user shall have the burden of proving by the preponderance of evidence the elements of the basis of right.

3 SB 389

1 1865. Nothing in this article shall limit the authority of the state board to issue any decision or order, or to take any other action authorized by law.

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DISCUSSION ITEM

April 5, 2023

TO: Board of Directors

FROM: Harvey De La Torre,

Assistant General Manager

Staff Contact: Melissa Baum-Haley

SUBJECT: METROPOLITAN WATER DISTRICT (MET) ITEMS CRITICAL TO ORANGE

COUNTY

STAFF RECOMMENDATION

Staff recommends the Board of Directors to review and discuss this information.

DETAILED REPORT

This report provides a brief update on the current status of the following key MET issues that may affect Orange County:

- a. MET's Finance and Rate Issues
- b. Water Supply Condition Update
- c. Water Quality Update
- d. Colorado River Issues
- e. Delta Conveyance Activities and State Water Project Issues

ISSUE BRIEF #A

SUBJECT: MET Finance and Rate Issues

RECENT ACTIVITY

Water Transactions for January 2023 (for water delivered in November 2022) totaled 112.4 thousand acre-feet (TAF), which was 45.9 TAF lower than the budget of 158.3 TAF and translates to \$105.5 million in receipts for January 2023, which was \$36.2 million lower than budget of \$141.7 million

Year-to-date water transactions through January 2023 (for water delivered in May 2022 through November 2022) were 1,005.2 TAF, which was 39.2 TAF lower than the budget of 1,044.4 TAF. Year-to-date water receipts through January 2023 were \$936.2 million, which was \$56.3 million lower than the budget of \$992.5 million.

On March 14, Judge Anne-Christine Massullo of the San Francisco Superior Court issued her tentative statement of decision concerning the trial in the consolidated *SDCWA v. Metropolitan, et al.* cases (filed in 2014, 2016, and 2018), in which SDCWA sought over \$334 million in contract damages. The decision is tentative, pending SDCWA's statutory right to file an objection.

Update Regarding San Diego County Water Authority v. Metropolitan Litigation

In the tentative decision, for each claim litigated at trial, as summarized below, Judge Massullo ruled in favor of Metropolitan or found the claim to be moot based on the rulings in Metropolitan's favor:

Breach of the Exchange Agreement. Metropolitan did not breach the Exchange Agreement: ". . . [T]he duty to charge fair compensation did not arise and that Metropolitan did not breach the Exchange Agreement by failing to calculate a reasonable credit for any offsetting benefits. As Metropolitan did not breach the Exchange Agreement, the Court need not address damages."

Reformation. Metropolitan's conditional claims to reform the Exchange Agreement, if SDCWA prevailed, are moot.

Declaration of Metropolitan's rights and duties under the Wheeling Statutes. Metropolitan's conditional claim for a declaration of its rights and duties under the Wheeling Statutes, if SDCWA prevailed on its claim that the Wheeling Statutes apply to the Exchange Agreement, are moot.

Rate challenges. Judge Massullo rejected SDCWA's rate challenges.

Declaration whether SDCWA must contribute to a damages award. Judge Massullo ruled that SDCWA's request for a declaration that it could not be required to contribute to a damages, fees, or costs award in the cases is moot.

As the tentative statement of decision notes, the parties previously resolved the Water Stewardship Rate claims in SDCWA's favor, pursuant to a 2021 Court of Appeal decision.

Order on Motion for Partial Judgment

Judge Massullo previously granted in part and denied in part SDCWA's motion for partial judgment. The court had postponed ruling on Metropolitan's claims for a declaration on Metropolitan's "cost causation" obligations when setting rates. Today Judge Massullo issued an amended order on those postponed claims:

Cost causation. Metropolitan's cost causation claims are not subject to court review: "Metropolitan cannot demonstrate a declaration regarding cost causation is the proper subject for declaratory relief."

The tentative statement of decision and the order on the motion for partial judgment are attached. The decisions were discussed in more detail at the Board workshop on March 28.

Attachments: (1) Tentative Statement of Decision

(2) Order on Motion for Partial Judgment

ISSUE BRIEF #B

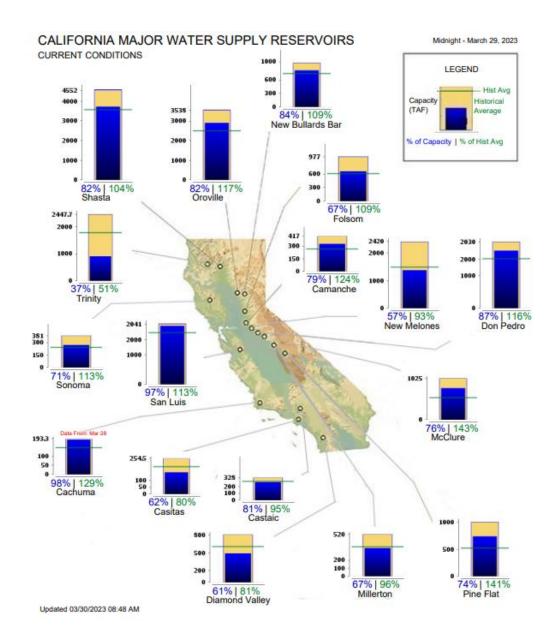
SUBJECT: MET's Supply Condition Update

RECENT ACTIVITY

The 2022-23 Water Year (2022-23 WY) officially started on October 1, 2022. Thus far, Northern California accumulated precipitation (8-Station Index) reported 59.4 inches or 143% of normal as of March 30th. The Northern Sierra Snow Water Equivalent was at 56.3 inches on March 30th, which is 202% of normal for that day. Due to barrage of atmospheric rivers in January and March, the Department of Water Resources (DWR) has increased the State Water Project (SWP) "Table A" allocation to 75%. This allocation provides Metropolitan with approximately 1,433,625 AF in SWP deliveries this water year. With historical precipitation/snowfall through WY 2023, it is anticipated that the Table A allocation will increase. DWR's SWP Allocation considers several factors including existing storage in SWP, conservation reservoirs, SWP operational regulatory constraints, and the 2023 contractor demands. In additional, Metropolitan received 134,000 AF for Human Health and Safety Supply in CY 2022.

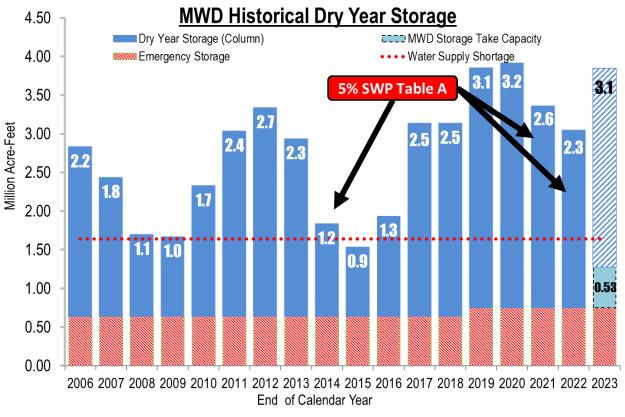
The Upper Colorado River Basin accumulated precipitation is reporting **20.0 inches or 120% of normal as of March 30th**. On the Colorado River system, snowpack is measured across four states in the Upper Colorado River Basin. The Upper Colorado River Basin Snow Water Equivalent was reporting **24.9 inches as of March 30th**, which is **132% of normal** for that day. Due to the below average inflows into Lake Powell over the past several years, the United States Bureau of Reclamation <u>declared a shortage at Lake Mead that has been ongoing since January 1st</u>, **2022**. There is and a 93% chance of shortage continuing in CY 2024 and a 60% chance that Metropolitan will see a 250,000 AF reduction in Colorado River water supplies in CY 2024.

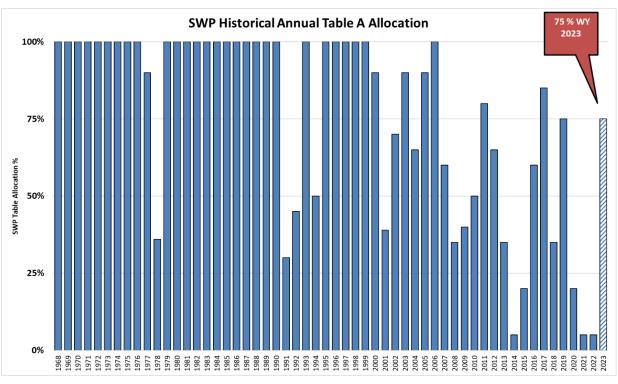
As of March 29th Lake Oroville storage is at **82% of total capacity and 117% of normal**. As of March 29th San Luis Reservoir has a current volume of **97% of the reservoir's total capacity and is 113% of normal**.



With CY 2023 estimated total demands and losses of 1.51 million acre-feet (MAF) and with a 75% SWP Table A Allocation, Metropolitan is projecting that supplies will exceed demands levels in Calendar Year (CY) 2023. Based on this, estimated total dry-year storage for Metropolitan at the end of **CY 2023 will increase to approximately 3.10 MAF.**

A projected dry-year storage supply of 3.10 MAF would still be about 2.10 MAF above where MWD has historically declared a water supply allocation. A large factor in maintaining a high water storage level are lower than expected water demands. We are seeing regional water demands reaching a 38-year low. Since water supply conditions have dramatically improve in California for 2023, the will be no MWD Water Supply Allocation in CY 2023. However, with a majority of MWD's water supplies stored in Lake Mead and with a 5 year shortage projection at Lake Mead, there remains a lot of uncertainty to where supply balances will be in the future.





2023 WSDM Storage Detail

	1/1/2023 Estimated Storage Levels ¹	CY 2023 Take Capacity ²	2023 Total Storage Capacity	
WSDM Storage				
Colorado River Aqueduct Delivery System	1,139,000	TBD	1,657,000	
Lake Mead ICS	1,139,000 ³	TBD ⁴	1,657,000	
State Water Project System	492,000	158,000	1,879,000	
MWD SWP Carryover ³	28,000	20,000	350,000	
DWCV SWP Carryover 5	28,000	28,000	350,000	
MWD Articles 14(b) and 12(e)	0	0	N/A	
Castaic and Perris DWR Flex Storage	3,000	3,000	219,000	
Arvin Edison Storage Program	120,000	8,000 €	350,000	
Semitropic Storage Program	158,000	57,000	350,000	
Kern Delta Storage Program	137,000	39,000	250,000	
Mojave Storage Program	19,000	9,000	330,000	
AVEK Storage Program	27,000	14,000	30,000	
In-Region Supplies and WSDM Actions	698,000	329,000	1,246,000	
Diamond Valley Lake	494,000	237,000	810,000	
Lake Mathews and Lake Skinner	194,000	82,000	226,000	
Conjunctive Use Programs (CUP) 7	10,000	10,000	210,000	
Other Programs	662,000	40,000	1,181,000	
Other Emergency Storage	381,000	0	381,000	
DWCV Advanced Delivery Account	281,000	40,000	800,000	
Total	2,991,000	527,000	5,963,000	
Emergency	750,000	0	750,000	
Total WSDM Storage (AF) 8	2,241,000	527,000	5,213,000	

Preliminary start of year balances, subject to DWR adjustments and USBR final accounting in May 2023.

² Take capacity assumed under a 30 percent SWP Table A Allocation. Storage program losses included where applicable.

³ This amount is net of the water Metropolitan stored for IID in Lake Mead in an ICS sub-account.

⁴ Take capacity will be based on planned maintenance activities, current CRA supply estimate, and operational decisions to protect Metropolitan's future CRA diversions. Although capacity is currently available, Metropolitan is planning to limit its take of ICS in 2023

Total storage capacity varies year to year based on prior year remaining balance added to current year contractual limits.

⁶ Began receiving surface water supplies in-lieu of groundwater in February using the Friant Kern Canal. Take amounts dependent on the capacity of the Friant Kern Canal.

⁷ Total of all CUP programs including IEUA/TVMWD (Chino Basin); Long Beach (Central Basin); Long Beach (Lakewood); Foothill (Raymond and Monk Hill); MWDOC (Orange County Basin); Three Valleys (Live Oak); Three Valleys (Upper Claremont); and Western

⁸ Total WSDM Storage level subject to change based on accounting adjustments.

ISSUE BRIEF #C

SUBJECT: MET's Water Quality Update

RECENT ACTIVITY

Water System Operations

Metropolitan member agency water deliveries were 63,200 acre-feet (AF) for January with an average of 2,039 AF per day, which was 1,474 AF per day lower than in December. Treated water deliveries decreased by 14,500 AF from December, for a total of 34,300 AF, or 54 percent of total deliveries for the month. The Colorado River Aqueduct (CRA) transitioned from seven to five and then four-pump flow in January, with a total of 65,000 AF pumped in January. This change in operations was due to several storms in late December and January, which decreased demands throughout Metropolitan's service area and resulted in higher than anticipated storage in Lake Mathews. State Water Project (SWP) imports averaged 303 AF per day, totaling about 9,400 AF for the month, which accounted for approximately 15 percent of Metropolitan's deliveries. The target SWP blend remained at zero percent for the Weymouth, Diemer, and Skinner plants.

Water Treatment and Distribution

The State Water Project target blend entering the Weymouth and Diemer plants and Lake Skinner was zero percent in February 2023.

Flow-weighted running annual averages for total dissolved solids from December 2021 through November 2022 for Metropolitan's treatment plants capable of receiving a blend of supplies from the State Water Project and the Colorado River Aqueduct were 599, 503, and 601 mg/L for the Weymouth, Diemer, and Skinner plants, respectively. On February 28, Metropolitan staff held a 100 Percent Compliance Committee meeting to review the Skinner plant's performance and activities to ensure continued 100 percent compliance with primary drinking water regulations. Metropolitan plant Metropolitan staff reviewed its regulatory compliance, operational performance, and optimization efforts. Metropolitan's 100 Percent Compliance Committee consists of managers from Water Treatment, Water Quality, Conveyance and Distribution, Engineering Services, and Control Systems. The committee meets regularly to review treatment plant and conveyance and distribution system performance and discuss compliance issues or operational modifications that may improve operations at Metropolitan facilities.

Future Legislation and Regulation

On February 16, the State Water Resources Control Board announced a proposal to reduce the manganese notification level (NL) from 500 μ g/L to 20 μ g/L and the response level (RL) from 5,000 μ g/L to 200 μ g/L, based on the Division of Drinking Water's newly developed health protective concentration. NLs and RLs are not enforceable regulations; rather, they are state recommendations to provide customers and consumers with information about the presence of chemicals and health concerns associated with potential exposure through

drinking water. Manganese is currently regulated by the U.S. Environmental Protection Agency (USEPA) and by California with a Secondary Maximum Contaminant Level of 50 μ g/L, based on staining and taste considerations. The USEPA also recommends a one-day health advisory of 1,000 μ g/L for acute manganese exposures for children and adults. On February 13, Metropolitan staff participated in the 2023 California-Nevada Section of the American Water Works Association (AWWA) Water Utility Council planning workshop in Sacramento, to develop the AWWA legislation and regulation priorities to track during the next year. Updates and discussion topics included the state's financial assistance and water operator certification programs. Participation in such forums ensures that Metropolitan has the latest information on legislative and regulatory activities.

On February 3, the California Air Resources Board (CARB) released an unofficial draft of the Advanced Clean Fleets (ACF) Regulation prior to the 15-day public comment period. Metropolitan has over 500 diesel and gasoline trucks that will be affected by the ACF regulation. The latest draft includes a delay of the zero-emission vehicle (ZEV) purchase requirement from 2024 to 2030; however, Metropolitan would need to be on a ZEV purchase compliance schedule. In addition, the updated draft includes new exemptions for infrastructure construction or electrification delays. Metropolitan staff is reviewing this latest draft and will provide comments to CARB, if needed.

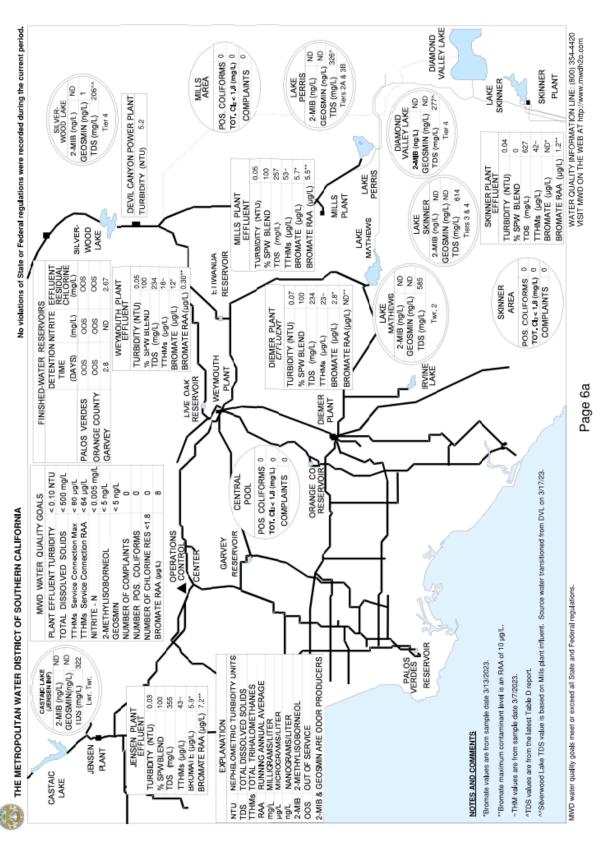
On January 18, the USEPA and the Army Corps of Engineers published the final rule revising the definition of "waters of the United States" (WOTUS). Metropolitan staff had previously commented in support of this rulemaking that restores the pre2015 definition of WOTUS and codifies recent Supreme Court decisions. Metropolitan staff will continue to monitor and engage on the issue, as USEPA still plans to build upon this "foundational rule" with a second rule designed to restore longstanding protections under the Clean Water Act.

On January 1, DDW issued a Drought and Conservation Technical Reporting Order (Order No. DDW_HQ_Drought2023_001) (Order) requiring all community water systems and non-transient non-community schools to prepare drought and conservation reports beginning January 2023. Metropolitan staff worked with the California Municipal Utilities Association (CMUA) last year to amend SB 552 to exclude Metropolitan's small water systems from the need to conduct drought reporting; yet the Order still does so. Metropolitan staff is conferring with DDW staff and CMUA to confirm whether Metropolitan's Eagle, Gene, and Iron Mountain pumping plants fall under the Order.

Weekly Water Quality System Status

Wednesday, March 22, 2023

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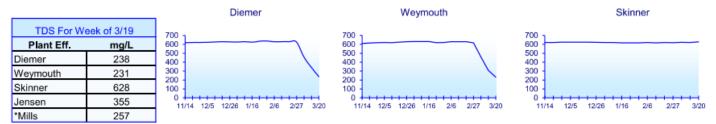


Water Quality Section Weekly TDS Report

For the week of 3/19/2023

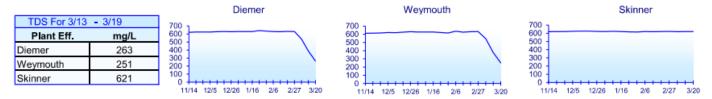
Percent SPW Needed to Achieve TDS Goal of 500 mg/L				Estimated TDS for Reservoirs		
Source Water TDS		SPW Required	Reservoir (Effluent) Date		mg/L	
Plant	CRW	SPW	Percent	Lake Havasu (Table D)	12/14/22	640
Weymouth	585	206	22%	Lake Mathews (DFPI-LWRFDR)	3/20/23	585
Diemer	585	206	22%	Lake Skinner (Outlet Structure)	3/20/23	614
Skinner-Silverwood	615	206	28%	Castaic Lake (JFPI)	3/19/23	322
Skinner-Perris	615	326	40%	Silverwood (Mills Inf)	3/20/23	206
CRW for Diemer and Weymouth is Lake Mathews and San Jacinto - West Portal for Skinner.			Lake Perris (Table D)	12/5/22	326	
				DVL Outlet (Table D)	12/27/22	277

SUNDAY COMPOSITE ESTIMATED TDS FOR 11/13/22 - 03/19/23



Sunday composite estimated TDS measured from plant effluent composite samples collected on Sunday and analyzed for hardness and electrical conductivity. *Collected on Monday 3/20/2023

WEEKLY COMPOSITE ESTIMATED TDS FOR 11/13/22 - 03/19/23



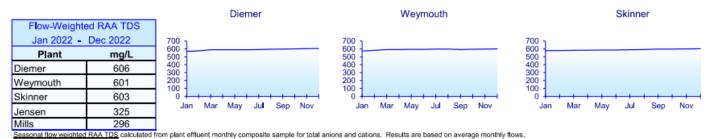
Weekly composite estimated TDS measured from plant effluent composite samples collected Monday through Sunday and analyzed for hardness and electrical conductivity.

MONTHLY COMPOSITE CALCULATED TDS FOR January 2022 - December 2022



Monthly calculated TDS calculated from plant effluent monthly composite sample for total anions and cations. These results are also used for Table D.

FLOW WEIGHTED RAA TDS FOR January 2022 - December 2022



ISSUE BRIEF #D

SUBJECT: Colorado River Issues

RECENT ACTIVITY

<u>Metropolitan Highlights Risks of Six Basin State Proposal to Metropolitan's Colorado River Supplies</u>

After the Colorado River Basin States (Basin States) were unable to develop a consensus proposal to be submitted to the Bureau of Reclamation (Reclamation) in the Supplemental Environmental Impact Statement (SEIS) to the 2007 Colorado River Interim Guidelines, California and six Basin States each submitted modeling proposals. The California proposal focuses on maximizing voluntary compensated conservation and contemplates mandatory cutbacks only if needed, whereas the six Basin State proposal immediately imposes significant cutbacks to all water users in the Lower Basin.

Metropolitan staff analyzed the risk of the six Basin State proposal to our region, concluding that although the proposal purported to evenly share cuts, up to 75 percent of Metropolitan's Colorado River supplies would actually be placed at risk. Metropolitan explained those risks to several outside entities, including the Los Angeles Times Editorial Board and members of Congress, to highlight the potential impact to our service area.

While two modeling proposals were submitted for the Draft SEIS, Metropolitan staff continued to work with the other Basin States to see whether a seven-state consensus proposal can be submitted to Reclamation for the Final EIS.

<u>Timeline for Reclamation's Supplemental Environmental Impact Statement</u>

Late 2022

The Bureau of Reclamation (Reclamation) initiated the process to develop a Supplemental Environmental Impact Statement (SEIS) to the 2007 Colorado River Interim Guidelines. The purpose of the SEIS is to analyze and develop new operating guidelines for the Colorado River that protect critical infrastructure and Lake Mead and Lake Powell, including power generation facilities. Reclamation stated that it would model several alternatives in the SEIS, including a consensus-based alternative from the Colorado River Basin States (Basin States), provided that such an alternative was submitted by the end of January.

December 2022

The seven Basin States and key water agencies, including Metropolitan, attempted to reach a consensus alternative to be included in the SEIS. After many days of meetings, in late January it was apparent such a consensus alternative could not be achieved. Six Basin States developed and submitted an alternative to Reclamation, and California submitted its own alternative. Both alternatives include significant water delivery reductions and include provisions to protect Human Health and Safety supplies. The California alternative seeks voluntary and compensated water conservation actions

initially, and if insufficient, moves to mandatory cutbacks. The six-state alternative imposes mandatory cutbacks immediately without any tools to help water agencies reduce their use.

April 2023 (expected)

It is anticipated that Reclamation may include both alternatives in the SEIS for evaluation. A draft SEIS is scheduled for release in late April 2023, and despite not being able to achieve a consensus-based modeling approach, the seven Basin States have each expressed interest in working together to see if all states can develop and support a proposed preferred alternative to Reclamation for the Final SEIS.

May/June 2023 (expected)

It is anticipated that comments for the Final SEIS will be due in late May or early June 2023.

July 2023 (expected)

A Record of Decision is anticipated in July 2023, with any new delivery reductions and new operating rules applied to the Lower Basin from 2024 through 2026.

<u>ISSUE BRIEF #E</u>

SUBJECT: Delta Conveyance Activities and State Water Project Issues

RECENT ACTIVITY

Delta Conveyance

The public comment period for the Delta Conveyance Project (DCP) Draft Environmental Impact Report (EIR) closed on December 16, 2022. The Department of Water Resources (DWR) received more than 700 unique comment letters with over 6,000 individual comments. DWR is currently working to organize the comments and develop responses. The Final EIR is expected at the end of 2023. It will include responses to all substantive comments on the Draft EIR and edits to the Draft EIR, as appropriate, to respond to the comments.

The U.S. Army Corps of Engineers released the public Draft Environmental Impact Statement (EIS) for DCP in December 2022, and comments are due on March 16, 2023. The Draft EIS has some similarities to DWR's Draft EIR but also some key differences. DWR prepared a summary of the similarities and differences. It is available on the DWR website. (https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/DeltaConveyance/Environmental-Planning/DWR_DCP_DRAFT-EIS_FS_Final_Dec-2022.pdf).

Joint Powers Authorities

During the regularly scheduled Board of Directors meeting on February 16, the Delta Conveyance Design and Construction Authority (DCA) Board of Directors adopted a resolution commending and thanking Director Richard Atwater for his service on the DCA board. Director Atwater was instrumental to the creation of the DCA, its success to date, and its expected continued development. Director Miguel Luna is the new Metropolitan representative on the DCA board. The DCA board also approved a resolution extending the authorization for virtual board and committee meetings and received the monthly board report information item. The February 16 regularly scheduled Delta Conveyance Finance Authority meeting was cancelled.

Sites Reservoir

In their February joint meetings, the Sites Project Authority Board (Authority Board) and the Sites Reservoir Committee (Reservoir Committee) conducted the 2023 election of officers. The current committee and workgroup designations and participation was confirmed. The Reservoir Committee and Authority Board also approved the 2023 federal and state legislative priorities for the project.

Science Activities

Metropolitan staff worked with researchers from UC Davis to initiate the second deployment of the Delta Smelt Pilot Propagation Study on Bouldin Island. The purpose of the study is to

evaluate whether the impoundments on Metropolitan islands can be leveraged to conduct Delta Smelt Supplementation Research. The first deployment from November 21, 2022, to January 5, 2023, successfully demonstrated that it is possible. The second deployment is to repeat and verify the results and test conditions during the warmer period of March 2023.

Phase 3 of the Reorienting to Salmonid Recovery project started this month and includes developing an agreed-upon suite of priorities for salmonid recovery. This phase will use an iterative approach with participants and modelers to review and refine recovery scenarios. Metropolitan staff is organizing intensive workshops for participants to work in groups using web applications developed to evaluate model output sensitivity to different salmonid management scenarios and understand the trade-offs associated with different suites of recovery actions. Workshops will be held March to December 2023.

Regulatory Activities

On February 13, in response to Governor Newsom's Executive Order (EO) N-3-23 to build water resilience amid climate-driven weather extremes, both DWR and the U.S. Bureau of Reclamation (USBR) submitted a Temporary Urgency Change Petition (TUCP) to the State Water Resources Control Board (State Board). This TUCP requested approval to temporarily modify the most-westerly X2 (2 parts per thousand isohaline at Port Chicago) compliance location specified in their water right permits for February and March to the next upstream compliance location at Chipps Island. Without the TUCP, DWR and USBR would be required to cut Delta exports and/or release stored water from upstream reservoirs to provide an estimated 700,000 acre-feet of Delta outflow required to maintain the X2 at Port Chicago. On February 14, the California Department of Fish and Wildlife (CDFW) submitted a letter to the State Board identifying no unreasonable impacts to fish and wildlife resulting from the TUCP. On February 22, the State Board conditionally approved the changes within the TUCP through March 31, 2023.

Metropolitan staff coordinated with the State Water Contractors to develop and implement a special environmental DNA monitoring program, from January 20 to February 3, to determine whether Delta smelt were present in the South Delta turbidity field and to evaluate the effects of the 2019/20 Biological Opinion and Incidental Take Permit Early Winter Pulse Protection Action. The monitoring did not detect Delta smelt in the south Delta, suggesting that the action may not always be needed during high turbid conditions. The monitoring results may inform management of turbidity to reduce the entrainment of Delta smelt.

Delta Island Activities

Metropolitan staff submitted a \$20 million concept proposal to the Delta Conservancy's Nature Based Solutions: Wetland Restoration Grant Program. The concept proposal is for a three-year project that will convert approximately 4,500 acres on Webb Tract to a mosaic of managed flooded wetlands and rice fields to stop and/or reverse ongoing organic soil subsidence, reduce greenhouse gas emissions, provide environmental benefits by contributing to augmentation of the Delta pelagic food web, and generate an income from carbon credits generated from the proposed flooded wetlands and lease income from the proposed rice fields. The proposed project has been selected to move forward in the grant process. Metropolitan staff will introduce the project at Metropolitan's March One Water and

Stewardship Committee meeting. The Delta Conservancy Board will consider the Webb Tract grant application at an upcoming board meeting, anticipated in summer or fall 2023.



MAR 1 4 2023

CLERK OF THE COURT

BY:

Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 306

Lead Case No. CPF-14-514004 Consolidated with Case Nos. CPF-16-515282 and CPF-18-516389

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SAN DIEGO COUNTY WATER AUTHORITY

TENTATIVE STATEMENT OF DECISION

INTRODUCTION

Petitioner San Diego County Water Authority ("San Diego") filed three actions against Respondent Metropolitan Water District of Southern California ("Metropolitan"), which were consolidated for all purposes.¹ These cases follow more than two decades of litigation, including two consolidated cases tried before this Court (Hon. Curtis E.A. Karnow) from 2013 to 2015, and three appellate opinions.²

The Court held a bench trial on May 16, 2022 through May 20, 2022, May 24, 2022 through May 25, 2022, June 3, 2022, June 24, 2022, and July 1, 2022, the Honorable Anne-Christine Massullo

"San Diego" is also referred to as "SDCWA" or the "Water Authority." San Diego is distinct from the City and County of San Diego. "Metropolitan" is also referred to as "MWD."
 San Diego County Water Authority v. Metropolitan Water District of Southern California (2017) 12
 Cal.App.5th 1124, 1131 ("SDCWA I"); San Diego County Water Authority v. Metropolitan Water District

of Southern California (Cal. Ct. App. Sept. 21, 2021) 2021 WL 4272331 ("SDCWA II"); San Diego County Water Authority v. Metropolitan Water District of Southern California (Cal. Ct. App. Mar. 17, 2022) 2022 WL 806429 ("SDCWA III").

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presiding. On August 19, 2022, the parties filed post-trial briefs. On September 27, 2022, the Court held closing arguments. On December 16, 2022, the parties submitted proposed statements of decision and the Court took this matter under submission. The following is this Court's tentative statement of decision, subject to a party's objection under California Rules of Court, rule 3.1590(g).

BACKGROUND

The 1,450 mile-long Colorado River provides water that sustains cities, businesses, and agricultural resources of the southwestern United States as well as northern Mexico. Seven states share in the water flows of the Colorado River: Colorado, New Mexico, Utah, Wyoming, Arizona, Nevada, and California.

San Diego and Metropolitan are wholesale water agencies that provide similar services to their public member agencies. (Reporter's Transcript ("RT") 1151:3-27, 1161:24-1162:26.) Metropolitan is a voluntary cooperative of 26 member agencies, including San Diego, with a service area extending throughout six counties in Southern California. (*Id.* at 1161:24-1162:26, 1163:6-25.) San Diego, in turn, is made up of 24 member agencies with a service area in a portion of Metropolitan's service area: the San Diego region. (*Id.* at 88:12-22.)

Metropolitan delivers wholesale water to San Diego and its other member agencies from two principal sources: the Colorado River via the Colorado River Aqueduct ("CRA") and the State Water Project ("SWP") via the California Aqueduct. (SDCWA I, 12 Cal.App.5th at 1131; RT 1151:3-27.) Metropolitan is one of a few California entities with rights to Colorado River water. (RT 1167:9-21.) The Imperial Irrigation District ("IID") also has rights to Colorado River water and is permitted "to sell its excess water to other agencies, such as Metropolitan and the Water Authority." (SDCWA I, 12 Cal.App.5th at 1134.) "Metropolitan built the [CRA] to take delivery of its Colorado River water at Arizona's Lake Havasu and transport it to Southern California." (Id. at 1133.)

Metropolitan enters into water exchange agreements with member agencies and third parties. (See *SDCWA I*, 12 Cal.App.5th at 1135.) Metropolitan is required by statute to establish rates for its wholesale water service at amounts sufficient to generate revenue to pay all of Metropolitan's costs, after applying property taxes and other sources of revenue under the Metropolitan Water District Act, Water Code Appx.

§§ 109-134. (RT 1521:14-22.) Metropolitan's Board of Directors sets rates every two years. In each rate setting year, the Board approves rates for the following two calendar years. (*Id.* at 1174:10-1175:6, 1494:25-1495:20.)

San Diego serves various cities and water districts within San Diego County, including the city of San Diego, with water imported from outside of San Diego County and water developed locally in San Diego County. In addition, San Diego has acquired two independent sources of Colorado River water. First, San Diego entered into an agreement with IID ("Transfer Agreement"), where IID agreed to transfer approximately 200,000 acre-feet of water per year in exchange for specified payments to IID that help fund conservation initiatives with Imperial Valley farmers. (RT 94:4-21.) Second, San Diego receives water from the Coachella Canal and All-American Canal. (*Id.* at 1276:12-18.)

In *Arizona v. California* (1963) 373 U.S. 546, 550-562 ("*Arizona*"), the Supreme Court limited California's basic allotment of Colorado River water to 4.4 million acre-feet annually based on federal legislation that authorized the Hoover Dam and All-American Canal. That legislation went into effect in 1929 after California accepted the 4.4 million acre-feet limitation, as the legislation required. For decades after *Arizona*, Nevada and Arizona were not fully using their allotment, therefore the Colorado River was in "surplus." (RT 286:3-16.) As a result, California took more than its 4.4 million acre-feet allotment. (*Id.*) By 1986, Arizona began to claim its full allotment. This created California's "single most pressing water problem" of how to replace Metropolitan's former Colorado River supplies. (PTX 1071 at LH00109.) One solution was for southern California cities and water agencies to "purchase conserved waters" from agricultural districts like IID. (*Id.* at LH 00151.) The desire to facilitate and encourage water transfers inspired the California Legislature to enact the Wheeling Statutes the same year. (See *id.*) The Wheeling Statutes, Water Code section 1810 *et seq.*, set forth the rules for third-party conveyance of water in California.

After a devastating drought from 1987 to 1992 led Metropolitan to reduce San Diego's supplies of Metropolitan water by more than 30% (RT 89:24-90:11), San Diego began negotiating an agreement with IID for an agricultural-to-urban water transfer to diversify its supply to become less dependent on Metropolitan. (*Quantification Settlement Cases* (2011) 201 Cal.App.4th 758, 788 ("*QSA Cases*"); RT

92:9-93:17.) Under the Transfer Agreement, San Diego would pay IID to fund conservation programs with Imperial Valley farmers in exchange for the right to use 200,000 acre-feet per year of Colorado River water conserved ("conserved Colorado River water"). (See, e.g., RT 889:5-12; PTX1065 at 48.) San Diego's desire to use Metropolitan's facilities to convey water it would purchase from IID spurred Metropolitan to develop a set of "wheeling principles." (RT 313:8-318:7, 1538:7-22, 1538:7-1542:11.)

In January 1997, Metropolitan's Board of Directors adopted Resolution 8520 and the pre-set wheeling rate (former Admin. Code § 4405) applicable only to short-term transactions of one-year or less with member agencies (former Admin. Code § 4119), effective January 10, 1997. (DTX 23; see also SDCWA I, 12 Cal.App.5th at 1138 n.7.) Under Resolution 8520, section 10, Metropolitan's member agencies agreed to reduce the pre-set wheeling rate on a transaction-by-transaction basis to account for regional supply benefits if they were determined to exist:

The wheeling rates shall be reduced to reflect the regional water supply benefits provided to Metropolitan's service area, if any, on a case-by-case basis in response to a particular wheeling transaction. The regional benefits, if any shall be calculated by Metropolitan in the same manner as such benefits are calculated for use in the Local Projects and Groundwater Recovery Program. (DTX 23.)

San Diego "has no means of transporting Colorado River water other than over Metropolitan's aqueduct." (SDCWA I, 12 Cal.App.5th at 1135.) To facilitate the Transfer Agreement, San Diego proposed a wheeling agreement with Metropolitan, but the parties were unable to successfully negotiate one. (RT 1518:7-1519:19; see also SDCWA I, 12 Cal.App.5th at 1135.) Instead, the parties entered into a 30-year exchange agreement under which Metropolitan delivers water to San Diego in a like quality and quantity of the water that Metropolitan accepts at Lake Havasu. (SDCWA I, 12 Cal.App.5th at 1136.) Under the 1998 Exchange Agreement ("1998 Agreement"), San Diego agreed to pay Metropolitan \$90 per acre-foot with annual increases. The 1998 Agreement was conditioned on the state legislature's appropriation of \$235 million to Metropolitan for projects, including to line the earthen All-American and Coachella Canals to conserve a water supply that would otherwise be lost through seepage ("canal lining water"). (DTX28.) However, the 1998 Agreement could not take effect until various conditions precedent had been satisfied, including a quantification (i.e., specific division) of the 3,850,000 acre-feet allotted to California agricultural agencies, from among California's 4.4 million acre-feet allotment of

Colorado River water. (PTX 31 ¶ 8.1(c); RT 525:3-526:17.) Therefore, no exchanges occurred under the 1998 Agreement because Colorado River water rights first needed to be quantified, which was a process involving many stakeholders in the Colorado River. (RT 422:10-14.)

In 2003, various California water agencies negotiated agreements collectively referred to as the "Quantification Settlement Agreements" ("QSA"). The QSA are comprised of dozens of interrelated agreements addressing a variety of long-standing disputes regarding the priority, use, and transfer of Colorado River water in California. (See PTX65, Recital F.) Those agreements include an amended Transfer Agreement between San Diego and IID, and the operative exchange agreement. (See *id*.) The full set of QSA Agreements were executed on October 10, 2003.

The exchange agreement, between San Diego and Metropolitan, was negotiated over a span of seven years from 1996 to 2003, as part of a multi-year negotiation amongst California's water agencies that culminated in the QSA. (See *QSA Cases*, 201 Cal.App.4th 773, 778-779.) On October 10, 2003, Metropolitan and San Diego entered into the 2003 Exchange Agreement ("Exchange Agreement"), which amended and restated the 1998 Agreement, and an Allocation Agreement. (PTX65; PTX67.) The consideration package is set forth across the two documents: the Exchange Agreement set forth the price, and the Allocation Agreement set forth Metropolitan's assignment to San Diego of its \$235 million appropriation and the canal lining water for 110 years. (RT 584:24-585:16.)

Section 5.2, the Price term, of the Exchange Agreement, states:

The Price on the date of Execution of this Agreement shall be [\$253.00]. Thereafter, the Price shall be equal to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies.

(PTX65 ¶ 5.2.)

Under the Exchange Agreement, San Diego makes IID and canal lining water available to Metropolitan at Lake Havasu, where it becomes Metropolitan's water. (RT 1272:1-4, 1272:6-9, 1272:22-26, 1535:3-18, 1861:23-1862:6, 1992:3-8.) In return, Metropolitan delivers a like quantity of water from any source(s) to San Diego, in equal monthly intervals. (RT 1450:4-1451:6.) The contract does not provide for the transportation of San Diego water. Instead, it calls for the exchange of separate supplies of water: the IID and canal lining water that becomes Metropolitan water at Lake Havasu, before it enters

Metropolitan's system, is exchanged for Metropolitan water from source(s) that is delivered in San Diego's service area. (RT 1450:4-1451:6.)

In 2010 and 2012, San Diego sued Metropolitan for breach of the Exchange Agreement and to challenge two aspects of Metropolitan's transportation rates and pre-set wheeling rate for the years 2011 to 2014: (1) allocation of Metropolitan's SWP transportation costs to transportation rates and to the pre-set wheeling rate; and (2) allocation of the Water Stewardship Rate ("WSR") (recovering demand management program costs) to transportation rates and to the pre-set wheeling rate. San Diego prevailed on both issues at trial and both parties appealed various aspects of the judgment. The Court of Appeal held that Metropolitan properly allocated SWP costs to its transportation rates, but that it could not allocate demand management costs to its transportation rates charged under the Exchange Agreement or to its pre-set wheeling rate through the WSR, finding that those costs were supply-related rather than transportation-related. (SDCWA I, 12 Cal.App.5th at 1147-1152, n. 16.) The Court of Appeal remanded with instructions for the trial court to recalculate damages based only on the WSR charged under the Exchange Agreement from 2011 to 2014. The Court of Appeal also held Metropolitan breached the Exchange Agreement by including the WSR in its price. (Id. at 1154-1155.)

On April 18, 2014 and April 12, 2016, Metropolitan set rates for 2015 to 2016 and 2017 to 2018, respectively. (2014 AR89, 94; 2016 AR75, 81.) The "Full Service Exchange Cost," consists of Metropolitan's System Access Rate, System Power Rate, and WSR. (2014 AR89, 94.) San Diego objected to the rates, asserting "the same objections presented in the recent trial before Judge Karnow," including "Metropolitan's failure to credit offsetting benefits." (PTX892 at 2 (cleaned up), PTX886, PTX915, PTX1140.)

On March 11, 2018, following the Court of Appeal's decision in *SDCWA I*, San Diego sent a letter to Metropolitan raising various concerns with Metropolitan's Rates. (PTX925.) In that letter, San Diego explicitly requested that Metropolitan "calculate the offsetting benefits of the Water Authority's Exchange Agreement water" and include those credits within "the Water Authority's price under the Exchange Agreement." (*Id.* at 5-6.) Metropolitan refused. (PTX926, 7.) On April 27, 2018, after Metropolitan adopted rates for 2019 and 2020, San Diego objected and "specifically referenced the 'objections

presented in the extensive pending rate litigation between the Water Authority and MWD." (Feb. 22, 2022 San Diego MSA, Ex. 35, 1.)

On August 18, 2020, the Metropolitan Board of Directors repealed Resolution 8520, leaving all wheeling arrangements subject to negotiated terms. (DTX2529; RT 1387:16-1388:25.)

San Diego's operative complaint in the 2014 case includes five causes of action. The first three causes of action seek a writ of mandate, declaratory relief, and invalidation of Metropolitan's 2015 and 2016 wheeling and transportation rates charged under the Exchange Agreement, including the Full Service Exchange Cost. (2014 FAC ¶ 61-85.) San Diego alleges these rates are unlawful for two reasons: 1) because they included the WSR, which the Court of Appeal has held they cannot; and 2) because they failed to account for offsetting benefits, at least as applied to the Exchange Agreement. (*Id.*) San Diego's fourth cause of action alleges Metropolitan breached the Exchange Agreement by charging a Price that included the WSR and that did not include any credit for offsetting benefits. (*Id.* ¶ 86-91.) The fifth cause of action seeks declaratory relief that Metropolitan is obligated to comply with Proposition 26, Article XIII, Section 1, subd. (e), of the California Constitution. (*Id.* ¶ 92-98.)

Metropolitan's cross-complaint in the 2014 case includes causes of action for declaratory relief and reformation. Specifically, Metropolitan seeks declaratory relief that: (1) Metropolitan's 2015 and 2016 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement/Full Service Exchange Cost lawfully include the WSR; (2) Metropolitan's 2015 and 2016 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement/Full Service Exchange Cost are lawful with respect to offsetting benefits; (3) Proposition 26 is inapplicable; (4) Government Code § 54999.7(a) is inapplicable; (5) cost causation is consistent with Metropolitan's existing legal requirements; (6) the Exchange Agreement neither incorporates nor is subject to fair compensation provisions; (7) San Diego is judicially estopped from claiming the Exchange Agreement is a wheeling transaction and subject to the Wheeling Statutes; (8) as a conveyance facility owner, Metropolitan determines any offsetting benefits; and (9) Metropolitan's rights and duties under the Exchange Agreement. (2014 XC ¶¶ 54-117, 124-129.) Metropolitan also seeks reformation of the Price term of the Exchange Agreement and reformation of the Exchange Agreement to reflect its rights and duties under

the Wheeling Statutes. (Id. ¶¶ 118-123, 130-135.)

San Diego's operative complaint in the 2016 case includes five causes of action. The first three causes of action seek a writ of mandate, declaratory relief, and invalidation of Metropolitan's 2017 and 2018 wheeling and transportation rates. San Diego alleges these rates are unlawful for the same reasons alleged in the 2014 case. (See 2016 SAC ¶¶ 35-40, 53-77.) San Diego's fourth cause of action alleges Metropolitan breached the Exchange Agreement by charging a Price that included the WSR (in 2017 only) and did not include any credit for offsetting benefits (in either year). (*Id.* ¶¶ 41-45, 78-83.) The fifth cause of action seeks declaratory relief that, in satisfying damages; Metropolitan may not charge San Diego for any portion of those damages, or any related interest or attorneys' fees. (*Id.* ¶¶ 46-49, 84-88.)

Metropolitan's cross-complaint in the 2016 case includes the same causes of action for declaratory relief and reformation as in the 2014 case, except as applied to its 2017 and 2018 pre-set wheeling rate and transportation rates. (See 2016 XC ¶¶ 54-135.)

San Diego's operative complaint in the 2018 case includes four causes of action. The first three causes of action seek a writ of mandate, declaratory relief, and invalidation of Metropolitan's 2019 and 2020 wheeling and transportation rates. (2018 SAC ¶¶ 60-85.) San Diego alleges these rates are unlawful for the same reasons alleged in the 2014 case. (*Id.* ¶¶ 39-46, 60-85.) San Diego's fourth cause of action alleges Metropolitan breached the Exchange Agreement by charging a Price that did not include any credit for offsetting benefits. (*Id.* ¶¶ 50-56, 86-91.)

Metropolitan's cross-complaint in the 2018 case alleges thirteen causes of action for declaratory relief and reformation. In particular, Metropolitan seeks declaratory relief that: (1) Metropolitan's 2019 and 2020 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement/Full Service Exchange Cost lawfully include the WSR; (2) Metropolitan has completed all needed actions to establish that it will not seek to recover the WSR for 2019 and 2020; (3) Metropolitan's 2019 and 2020 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement lawfully include California WaterFix costs;³ (4) Metropolitan's 2019 and 2020 pre-set wheeling rate and transportation rates as charged under the Exchange Agreement are lawful with respect to offsetting benefits; (5)

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³ On April 12, 2022, the parties stipulated to voluntarily dismiss their respective claims relating to Metropolitan's allocation of WaterFix costs for 2019 and 2020. (See generally, April 12, 2022 Order.)

Agreement to reflect its rights and duties under the Wheeling Statutes. (*Id.* ¶¶ 140-145, 152-157.)

On May 4, 2022, this Court granted Metropolitan's Motion for Summary Adjudication as to the eighth cause of action in the 2014 and 2016 Cross-Complaints and the tenth cause of action in the 2018 Cross-Complaint for declaratory relief that, as the conveyance facility owner, Metropolitan determines any offsetting benefits. (May 4, 2022 Order, 1-2, 13-17.)

On May 11, 2022, this Court granted San Diego's Motion for Summary Adjudication as to the

Proposition 26 is inapplicable; (6) Government Code § 54999.7(a) is inapplicable; (7) cost causation is

incorporates nor is subject to fair compensation provisions; (9) San Diego is judicially estopped from

claiming the Exchange Agreement is a wheeling transaction and subject to the Wheeling Statutes; (10) as

the conveyance facility owner, Metropolitan determines any offsetting benefits; and (11) Metropolitan's

rights and duties under the Exchange Agreement. (2018 XC ¶ 59-139, 146-151.) Metropolitan also

consistent with Metropolitan's existing legal requirements; (8) the Exchange Agreement neither

following causes of action: (1) Metropolitan's first cause of action for declaratory relief on the ground of issue preclusion in the 2018 Cross-Complaint; (2) Metropolitan's second, sixth, seventh, eighth, and tenth causes of action for declaratory relief in the 2014 and 2016 Cross-Complaints and Metropolitan's fourth, eighth, ninth, tenth, and twelfth causes of action for declaratory relief in the 2018 Cross-Complaint regarding Metropolitan's duty to charge more than fair compensation, which includes a reasonable credit for any offsetting benefits pursuant to Water Code section 1811(c); (3) Metropolitan's fourth cause of action in the 2014 and 2016 Cross-Complaints and Metropolitan's sixth cause of action in the 2018 Cross-Complaint for declaratory relief that Government Code section 54999.7(a) is inapplicable to Metropolitan's rates; (4) San Diego's fifth cause of action for declaratory relief that Metropolitan must comply with Proposition 26 in setting its rates and charges in the 2014 action; and (5) Metropolitan's third cause of action in the 2014 and 2016 Cross-Complaints and fifth cause of action in the 2018 Cross-Complaint for declaratory relief regarding Proposition 26. (May 11, 2022 Order, 2, 6-7, 21-25.)

The Court also granted San Diego's Motion for Summary Adjudication as to the following affirmative defenses raised by Metropolitan: (1) eighth (governmental immunity), ninth (separation of

powers), tenth (mootness), twelfth (res judicata and collateral estoppel), thirteenth (preclusion), fourteenth (judicial estoppel), twenty-fourth (lack of standing), and twenty-ninth (improper remedy) affirmative defenses in the 2014, 2016, and 2018 actions; (2) third (statute of limitations) and sixth (laches) affirmative defenses in the 2014, 2016, and 2018 actions; (3) fourth affirmative defense for failure to comply with the Government Claims Act in the 2014, 2016, and 2018 action; (4) fifth affirmative defense for failure to comply with Section 11.1 of the Exchange Agreement in the 2018 action; (5) twenty-fifth affirmative defense for declaratory relief that Government Code section 54999.7(a) is inapplicable to Metropolitan's rates in the 2014, 2016, and 2018 actions; and (6) twenty-sixth affirmative defense for declaratory relief that Proposition 26 is inapplicable to its rates and charges in the 2014, 2016, and 2018 actions. (Id. at 2, 8-13, 17-18, 21-25.)

On September 14, 2022, the Court granted San Diego's Motion for Partial Judgment as to Metropolitan's fifth affirmative defense under the dispute resolution provision in the 2014 and 2016 actions, Metropolitan's eleventh affirmative defense of waiver, and Metropolitan's seventeenth affirmative defense of consent. (Sept. 14, 2022 Order, 1, 3-5.)⁴

On December 27, 2022, the Court ordered:

The following claims regarding the inclusion of the Water Stewardship Rate in the pre-set wheeling rate and in the transportation rates as charged under the Parties' 2003 Amended and Restated Exchange agreement ("Exchange Agreement") are resolved in the Water Authority's favor: the First, Second, and Third Causes of Action in the Water Authority's 2014, 2016, and 2018 complaints; the Fourth Cause of Action in the Water Authority's 2014 and 2016 complaints; and the First Cause of Action in Metropolitan's 2014, 2016, and 2018 cross-complaints.

(Dec. 27, 2022 Order, 4.) Additionally, Metropolitan withdrew its second cause of action in the 2018 Cross-Complaint. (*Id.*)

DISCUSSION

I. Breach of Contract

"The elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting

⁴ The Court deferred ruling on Metropolitan's fifth cross-claim in the 2014 and 2016 actions and Metropolitan's seventh cross-claim in the 2018 action for declaratory relief regarding cost causation. (See Sept. 14, 2022 Order.) On March 14, 2023, the Court granted San Diego's Motion for Partial Judgment as to Metropolitan's fifth cross-claim in the 2014 and 2016 actions and Metropolitan's seventh cross-claim in the 2018 action for declaratory relief regarding cost causation.

damages to the plaintiff." (Marina Pacific Hotel and Suites, LLC v. Fireman's Fund Insurance Company (2022) 81 Cal.App.5th 96, 108, quoting Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 821 (cleaned up).) Only breach and damages are at issue. (See RT 23:11-13 ["There's no dispute here, the exchange agreement is a valid agreement and that the Water Authority has performed."], 950:20-24, 1526:13-16 [parties executed the Exchange Agreement].)

San Diego alleges Metropolitan breached the Price term of the Exchange Agreement. In particular, San Diego asserts that the price charged under the Exchange Agreement does not comply with "applicable law and regulation," namely, the Wheeling Statutes and Resolution 8520, because it fails to provide a reasonable credit for "offsetting benefits." (See 2014 FAC ¶ 44, 86-91; 2016 SAC ¶ 44, 78-83; 2018 SAC ¶ 53-54, 86-91.)

A. Metropolitan Did Not Breach The Agreement By Failing To Provide A Reasonable Credit For Any Offsetting Benefits.

"A contract must be interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code § 1636.) To interpret the meaning of a contract, the Court first considers the four corners of the contract itself. (See Civ. Code § 1638 ["The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."]; Linton v. County of Contra Costa (2019) 31 Cal.App.5th 628, 636 ["Courts first look to the plain meaning of the agreement's language."].)

"California law mandates that the owner or operator of a water conveyance facility allow others to use up to 70 percent of the facility's unused capacity to transport water upon payment of 'fair compensation.'" (SDCWA I, 12 Cal.App.5th at 1135, citing Water Code, §§ 1810, 1814; QSA Cases, 201 Cal.App.4th at 840-841.) "Fair compensation is defined as "the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for use of the conveyance system." (Water Code § 1811(c).) San Diego "has no means of transporting Colorado River water other than over Metropolitan's aqueduct and thus opened negotiations with Metropolitan to transport, or 'wheel,' Imperial Water. 'Wheeling' is an industry term for 'the use of a water conveyance facility by someone other than the owner or operator to transport

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27 28 water." (SDCWA I, 12 Cal.App.5th at 1135, quoting Metropolitan Water Dist. v. Imperial Irrigation Dist. (2000) 80 Cal.App.4th 1403, 1407 (cleaned up).)

The Price Term of The Exchange Agreement. 1.

The Price term of the Exchange Agreement states:

The Price on the date of the Execution of this Agreement shall be Two Hundred Fifty Three Dollars (\$253.00). Thereafter, the Price shall be equal to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies.

(PTX65 ¶ 5.2.)

It is undisputed Metropolitan did not provide a reasonable credit for offsetting benefits. Rather, the core issue in this case centers on the meaning and interpretation of "pursuant to applicable law and regulation" as stated in the Price term. Specifically, whether the Price term provides for a reasonable credit for offsetting benefits under Water Code § 1811(c). If, as San Diego claims, applicable law and regulation required Metropolitan to provide such a credit, neither side disputes that there would be a resulting breach by Metropolitan of the Exchange Agreement. If, however, applicable law and regulation did not require Metropolitan to provide a credit for offsetting benefits, there would be no breach.

The Exchange Agreement Is Not A Wheeling Agreement. a)

The introductory paragraph to the Exchange Agreement states it is an "AMENDED AND RESTATED AGREEMENT FOR THE EXCHANGE OF WATER." (PTX65, 1.) By definition, an exchange agreement is distinct from a wheeling agreement. As the Court of Appeal explained,

While functionally related, wheeling and exchange agreements are not the same. A wheeling agreement calls for the transportation of water when there is available capacity in the water conveyance system. An exchange agreement promises the delivery of a specified quantity of water. Water is not wheeled unless available, but an exchange agreement requires delivery of an agreed-upon quantity of water every month. Recipients under a wheeling agreement receive less than the transfer amount due to evaporation and other transit losses, but the conveyance system operator bears transit losses under an exchange agreement. As the trial testimony presented in the present case established, the parties here preferred an exchange agreement to a wheeling agreement. The Water Authority wanted guaranteed delivery and Metropolitan wanted the greater operational flexibility of an exchange agreement that permits the use of available facilities and supply sources.

(SDCWA I, 12 Cal.App.5th at 1136; see RT 296:17-20 ["Metropolitan preferred to do an exchange agreement because it gave them more flexibility in being able to provide a consistent transfer to the Water

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The Exchange Agreement solely addresses the delivery of a specified quantity of water rather than transportation of water when there is available capacity in the water conveyance system. In particular, Section III of the Exchange Agreement, titled "QUANTITY, DELIVERY, AND SCHEDULING" sets forth the parties' duties regarding Conserved Water, Canal Lining Water, Early Transfer Water, and Exchange Water. As to Conserved Water and Canal Lining Water,

The quantity of Conserved Water and/or Canal Lining Water Made Available to Metropolitan by SDCWA at the SDCWA Point of Transfer each Year shall be the lesser of: (1) the sum of the quantity of water which IID transfers to SDCWA under the Transfer Agreement in such Year and the quantity of Canal Lining Water allocated to SDCWA under the Allocation Agreement in such Year; or (2) 277,700 acre feet. The Conserved Water and/or the Canal Lining Water Made Available in each Year shall be deemed to have been Made Available to Metropolitan in monthly installments, with one-twelfth (1/12) of such water deemed to have Made Available in each calendar month of such Year (provided that, in the first Year, the quantity of such water deemed to have been Made Available in each month shall be determined by dividing the total quantity for that Year by the number of calendar months or portions thereof in that Year).

(PTX65 ¶ 3.1(a).) As to Early Transfer Water,⁵ "SDCWA will also Make Available to Metropolitan . . . the Early Transfer Water, in three annual installments." (*Id.* ¶ 3.1(b) [2,500 acre-feet in 2020, 5,000 acrefeet in 2021, and 2,500 acre-feet in 2022].) The Exchange Agreement also requires San Diego to provide Metropolitan with an annual written notice regarding:

the quantity of Conserved Water (including Early Transfer Water, if applicable) to be transferred to SDCWA in accordance with the Transfer Agreement, and of the quantity of Canal Lining Water to be allocated to SDCWA in accordance with the Allocation Agreement, and in each case to be Made Available to Metropolitan at the SDCWA Point of Transfer during the immediately following Year.

 $(Id. \ \ 3.1(c).)$

As to Exchange Water:

Provided that the Conserved Water (including Early Transfer Water, if applicable) and/or the Canal Lining Water has been Made Available to Metropolitan at the SDCWA Point of Transfer pursuant to Paragraph 3.1, Metropolitan shall deliver Exchange Water (including Early Exchange Water, if applicable) to SDCWA at the Metropolitan Point(s) of Delivery, in compliance with this Agreement, and in the manner and to the extent set forth below . . . [¶] Metropolitan's delivery of Exchange Water at the Metropolitan Point(s) of Delivery shall be governed by its rules and

⁵ "Early Transfer Water" is defined as "the aggregate ten thousand (10,000) acre-feet of Conserved Water to be transferred to SDCWA by IID in accordance with Section 3.5 of the Transfer Agreement." (PTX65 ¶ 1.1(k).)

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regulation for delivery of water set forth in Chapter 5 of Division IV of the Administrative Code⁶ in the same manner as other water delivered by Metropolitan, except as may otherwise be provided in this Agreement.

$(Id. \ \ \ \ \ 3.2(a).)$ Furthermore,

Exchange Water to be delivered in any Year shall be delivered in approximately equal monthly installments over the Year so that at the end of the twelfth month the aggregate quantity of Exchange Water delivered by Metropolitan will be equal to the aggregate quantity of Conserved Water (including Early Transfer Water, if applicable) and Canal Lining Water Made Available to Metropolitan at the SDCWA Point of Transfer for that Year, or at the times and in the amounts as the Parties may otherwise agree.

 $(Id. \ \ 3.1(c).)$

Not only do these express terms unambiguously set out the rights and obligations of the parties regarding the transfer of water, nowhere in the Exchange Agreement did the parties address the transportation of water when there is available capacity in the water conveyance system. Including those terms would indicate that the Exchange Agreement is in fact a wheeling agreement. Excluding those terms indicates the contrary. Moreover, in a wheeling transaction, evaporation and related losses are borne by the wheeler rather than the conveyance facility owner. (RT 211:8-12.) Under an exchange agreement, the conveyance facility owner bears the loss or is responsible for losses resulting from evaporation. (Id. at 211:16-19.) San Diego's former General Manager, Maureen Stapleton, testified that under the Exchange Agreement, it is Metropolitan, not San Diego, that assumes evaporation and related losses. This uncontradicted testimony further supports the conclusion that the Exchange Agreement is not a wheeling agreement.

b) Metropolitan Wheels Its Own Water.

Pursuant to the Exchange Agreement, "Exchange Water delivered to SDCWA shall be characterized as Metropolitan water and not as Local Water only for the limited purposes of Paragraph 5.2 [the Price] and the Interim Agricultural Water Program." (PTX65 ¶ 4.2.) "Exchange Water" is defined as:

water that is delivered to SDCWA by Metropolitan at the Metropolitan Point(s) of Delivery in a like quantity as the quality of water that SDCWA has Made Available to Metropolitan under the

⁶ Metropolitan "shall bill the member public agency for all water delivered through the service connection, and the member public agency shall pay [Metropolitan] for all water so delivered at the rate or rates and within the period from time to time fixed by the Board." (Admin. Code § 4501(a) [DTX 2718].)

Transfer Agreement and/or Allocation Agreement and this Agreement for the same Year. The Exchange Water may be from whatever source or sources and shall be delivered using such facilities as may be determined by Metropolitan, provided that the Exchange water delivered in each Year is of like quality to the Conserved Water and/or the Canal Lining Water which is Made Available to Metropolitan at the SDCWA Point of Transfer in such Year.

(Id. ¶ 1.1(m).) The SDCWA Point of Transfer is "Metropolitan's intake at Lake Havasu." (Id. ¶ 3.5(a).)

By the express terms of the Exchange Agreement, Metropolitan conveyed its own water to San Diego. In particular, Metropolitan had the discretion to choose the source or sources of water to be delivered to San Diego so long as it was "of like quality to the Conserved Water and/or Canal Lining Water." (PTX65 ¶ 1.1(m).) This is further supported by witness testimony. (RT 185:9-13 ["Q.... If the owner of the conveyance facility is moving its own water through its conveyance facility, that's not wheeling. . . A. I would not refer to that as wheeling."], 452:12-14 ["Wheeling is the conveyance of water not owned or controlled by the utility through the utility's facilities for delivery to a customer or other party."], 614, 1535:8-9 [Under the Exchange Agreement, "[f]or purposes of setting the price, it's Metropolitan water."].)⁷

c) Interpreting "applicable law and regulation."

The Exchange Agreement defines "Price" as "the applicable amount to be paid per acre-foot of Exchange Water delivered by Metropolitan to SDCWA at the Metropolitan Point(s) of Delivery under this Agreement." (PTX65 ¶ 1.1(t).) "Unable to agree upon the long-term price the Water Authority would be charged for water received under the agreement, the parties agreed to an initial price with future prices linked to standard water rates, lawfully set." (SDCWA I, 12 Cal.App.5th at 1136.) The Price term does not state what laws and regulations are applicable and the Exchange Agreement does not include the terms "wheeling" or "offsetting benefits." Although the parties do not assert the Price term is ambiguous, the present dispute arose from the parties' differing interpretations of "applicable law and regulation." (See RT 1013:24-1014:18; PTX 1177.)

In reaching its conclusion that payments under the Exchange Agreement must be credited in the calculation of preferential rights, the Court of Appeal reasoned that "[i]n agreeing to pay rates equal to the Metropolitan-supplied water rates, the Water Authority did not agree it was purchasing Metropolitan water." (SDCWA I, 12 Cal.App.5th at 1156.) But the issue of whether the Exchange Agreement was a wheeling agreement was not squarely before the Court, as it is here. (See John's Grill, Inc. v. The Hartford Financial Services, Group, Inc. (2022) 86 Cal.App.5th 1195, 1206 ["The words in the contract are to be interpreted in their 'ordinary and popular sense' unless 'used by the parties in a technical sense, or unless a special meaning is given to them by usage."], quoting Civ. Code § 1644; Coral Farms, L.P. v. Mahony (2021) 63 Cal.App.5th 719, 727 [same].)

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"Where necessary, a contract may be interpreted by reference to the circumstances under which it was made or the matter to which it relates Extrinsic or parol evidence may be used to explain ambiguity, context or related matter." (Hollingsworth v. Heavy Transport, Inc. (2021) 66 Cal.App.5th 1157, 1177, quoting Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd. (2010) 189 Cal.App.4th 101, 110-111; see Hollingsworth, 66 Cal.App.5th at 1178 [finding the trial court appropriately considered parol evidence to determine the meaning of disputed terms when the parties had competing interpretations of the contract].)

(1) Exchange Agreement Negotiations.

At trial, San Diego elicited testimony to support its claim that "applicable law" includes offsetting benefits under the Wheeling Statutes. Specifically, Bob Campbell, former Financial Services Manager for Metropolitan and Chief Financial Officer for San Diego, testified that the offsetting benefits credit was a "fundamental" term of the Exchange Agreement. (RT 280-281, 402:22-25; see 402:4-5 ["Applicable law was to incorporate and embody the fair compensation definition of 1811(c)"].) Mr. Campbell also testified his understanding of Metropolitan's position was that "wheeling would be synonymous with essentially an exchange agreement" and that "if Metropolitan was going to include systemwide charges in their wheeling rate, then they should also provide an offsetting credit for systemwide benefits." (Id. at 314:15-19, 315:6-9.) Scott Slater, San Diego's co-lead negotiator, testified he viewed "applicable law" as referring to the Wheeling Statutes during negotiations. (RT 545:5-12; see id. at 584:3-8.) Mr. Slater also testified that "applicable law and regulation" refers to "all laws in the state of California. So there's a process to set a charge here which is bounded by applicable law, which would include the Wheeling Statutes, fair compensation, and the laundry list of components." (RT 543:25-544:6; see id. at 545:5-12 [Mr. Slater told Metropolitan negotiators that "[a]pplicable law referred to the Wheeling Statutes."], 737:25-738:15 [Ms. Stapleton told Metropolitan during negotiations her understanding was that 'applicable law and regulation' certainly included the Wheeling Statutes."].)

San Diego's testimony reveals that offsetting benefits were important to it during negotiations, but the subjective intent of San Diego's negotiators does not control. "Although the intent of the parties determines the meaning of the contract, the relevant intent is objective—that is, the objective intent as

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evidenced by the words of the instrument, not a party's subjective intent." (Badie v. Bank of America (1998) 67 Cal.App.4th 779, 802, n. 9, quoting Shaw v. Regents of University of California (1997) 58 Cal.App.4th 44, 54-55 (internal citation and quotations omitted).) Here, the overall evidentiary record, including documentary evidence made at the time of these negotiations, undermines San Diego's current position that applicable law and regulation included a credit for offsetting benefits.

It is undisputed that no exchanges occurred under the 1998 Agreement because Colorado River water rights first needed to be quantified—a process involving many stakeholders in the Colorado River. (RT 421:6-10.) Although the 1998 Agreement's price term did not need to change for quantification to take place, it was San Diego that sought to change it by proposing two options. (DTX221, 14; DTX837; DTX856; RT 1369:15-19, 1371:2-5, 1527:9-13.) Under option 1, San Diego would continue to pay the same price negotiated in the 1998 Agreement. (DTX837; DTX856, 2; RT 1369:15-28, 1527:9-1528:10.) Under Option 2, Metropolitan would assign to San Diego its right to approximately 77,000 acre-feet of conserved canal lining water annually for 110 years, as well as Metropolitan's \$235 million legislative appropriation for canal lining and other projects; and in return, San Diego would pay a higher contract price based on Metropolitan's generally applicable unbundled transportation rates. (DTX827; RT 197:9-198:20, 242:7-12, 462:16-463:9, 1369:15-28.) "In consideration for MWD's assignment of canal lining water rights to SDCWA, SDCWA pays MWD's lawful wheeling rate in lieu of the Exchange Agreement rates." (DTX837; see DTX221, 14; DTX856, 2 ["In consideration for MWD's assignment of All-American and Coachella canal lining water rights to the Authority, the Authority would pay MWD's lawful wheeling rate in lieu of the Exchange Agreement. The MWD's current published wheeling rate is \$253 per acre-foot and is comprised of the System Access Charge, Water Stewardship Charge and power cost."].) San Diego's Board of Directors chose Option 2. (RT 1371:13-14, 1529:2-4.)

Notably, when San Diego – a public agency – contemplated Option 2, it made no mention of offsetting benefits in formal communications with its Board of Directors. Nor did it include estimations or analyses of offsetting benefits when considering its financial risk. (See generally, DTX837, DTX856; see, e.g., DTX221, 21 ["Risk: - Exposure to MWD Wheeling Rate . . . MWD Wheeling Rate inflation sensitivity needs to be considered."]; DTX837, 2 ["While Option 2 provides exposure to potentially

higher MWD wheeling costs over the initial term of the SDCWA/IID transfer, it offers an additional new water supply of 77,700 acre feet (8.5 MAF total) for 110 years at a cost that is lower than other long-term water supply options."]; see also DTX221, 23-26; DTX856, 9 ["there is far greater definition over costs associated with Option 2 than those that would be encountered in an effort to secure as-yet unidentified supplies to meet future demands."].) Instead, when conducting a financial risk analysis for Option 2, San Diego used Metropolitan's wheeling rate as an assumption. (DTX221, 22.) In particular, San Diego assumed a wheeling rate of \$253 per acre-foot. (*Id.*) The assumed wheeling rate included the "System Access Rate, Water Stewardship Rate and Power." (*Id.*; see also DTX837 ["Currently the MWD wheeling rate is set at \$253/af including the System Access and Water Stewardship Rates and power cost."]; DTX856, 8 ["While choosing Option 2 exposes the Authority to higher wheeling costs (comprised of MWD rate components System Access Charge, Stewardship Charge and fluctuations in power costs), it protects the Authority from even greater exposure associated with securing an alternative imported supply."]; RT 1368:14-28.)

In sum, the record of formal communications with San Diego's Board of Directors and all contemporaneous financial analyses at the time are silent as to any form of credit or offsetting benefit. Given the magnitude of the Exchange Agreement and its importance ultimately to the ratepayers to whom the San Diego's Board of Directors had a duty, it is unreasonable to conclude that San Diego would have completely omitted any discussions of offsetting benefits in addressing the budgetary and financial impacts of the proposed options if credits for offsetting benefits applied. (See, e.g., RT 462:9-13 [San Diego wanted to provide the board with a "full and complete" financial analysis of the two options.].)

Moreover, the record reflects the parties agreed the Price term of the Exchange Agreement consisted of Metropolitan's wheeling rate, which included only the system access rate, system power rate, and WSR. (DTX 221, 30 [staff recommendation to "Approve the assignments of MWD's canal lining project water rights in consideration for the Water Authority paying MWD's lawful wheeling rate"]; DTX 837; DTX856, 2; RT 789:17-790:6; see, e.g., SDCWA I, 12 Cal.App.5th at 1138-1139 ["Under the exchange agreement as amended in 2003, the Water Authority agreed to pay charges 'generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies' which, the parties agree are

the system access rate, water stewardship rate and . . . the system power rate."].)

A "system access rate" is designed to recover the capital, operating, and maintenance costs associated with transportation facilities, including "conveyance" facilities that transport water from the State Water Project and Colorado River Aqueduct and "distribution" facilities that transport water within Metropolitan's service area. (Admin. Code, § 4123) A "system power rate" recovers the cost of pumping water through the State Water Project and Colorado River Aqueduct to Southern California. (Admin. Code, § 4125.) A "water stewardship rate" is designed to recover the costs of conservation programs and other water management programs that reduce and defer system capacity expansion costs. (See Admin. Code, § 4124.)

(*Id.* at 1138.) Finally, there is no evidence that San Diego made any requests to Metropolitan to include offsetting benefits from the time it proposed Option 2 and execution of the Exchange Agreement. (RT 258:1-10; see *id.* at 792:25-793:3 [Ms. Stapleton had no recollection of a specific presentation to Metropolitan that mentioned offsetting benefits].)

(2) Resolution 8520.

"In 1997, Metropolitan adopted resolution No. 8520 establishing a wheeling rate, 'to recover fair compensation for the use of its conveyance system." (SDCWA I, 12 Cal.App.5th at 1148; see DTX 023.) Section 15 of Resolution 8520 states that "whether there is unused capacity in Metropolitan's conveyance system, and in particular facilities of the conveyance system, shall be made by the General Manager on a case-by-case basis in response to particular requests for wheeling." (DTX023, 5.)

At trial, the parties presented conflicting evidence as to whether Resolution 8520 fell under "applicable law and regulations" in the Price term. Mr. Campbell, former Financial Services Manager for Metropolitan and Chief Financial Officer for San Diego, testified that "applicable law" in the Price term included Resolution 8520. (TR 280-281, 402:8-10.) In contrast, Maureen Stapleton, San Diego's former General Manager, testified that Resolution 8520 did not govern the Exchange Agreement. (RT 800:21-801:10.) However, as the Exchange Agreement is not a wheeling agreement, there is no specification for unused capacity in Metropolitan's conveyance system because it provides for a specific allocation and no requirement for San Diego to request wheeling. (PTX65 ¶ 3.1(a)-(c); see RT 645:23-646:13.) In addition, on August 18, 2020, Metropolitan's Board of Directors repealed Resolution 8520 because "over the last 20 years, very few wheeling transactions, in fact, ever occurred and that each one was relatively unique and had to have its own negotiations. Almost every time, they were sort of one-off transactions."

(RT 1388:12-16; see DTX 2529.) Therefore, Resolution 8520 does not apply to the Price term.

(3) 1998 Agreement.

Under the 1998 Agreement, the "Contract Price" was: "For the first 20 Contract Years . . . \$90 per acre-foot of Exchange Water increased by 1.55% for every calendar year after 1998. For Contract Years 21 through 30, the Contract Price shall be \$80 per acre-foot increased by 1.44% for every calendar year after 1998." (DTX28 ¶ 5.2.) The Contract Price term in the 1998 Agreement is materially different than the Price term in the Exchange Agreement. (Compare DTX28 ¶ 5.2 with PTX65 ¶ 5.2.) In addition, the 1998 Agreement does not contain similar language to provide context when interpreting "applicable law and regulation" in the Price term of the Exchange Agreement. Accordingly, the 1998 Agreement has no bearing on the Exchange Agreement's Price term.

(4) Course Of Dealing.

The evidentiary record includes instances where San Diego specifically requested wheeling or entered into a wheeling agreement. On December 1, 2008, Maureen Stapleton, San Diego's General Manager, wrote to Metropolitan to request "wheeling service during 2009 to transport up to 10,000 acrefeet of water not owned or controlled by Metropolitan, subject to [Metropolitan's] available system capacity." (DTX75.) Ms. Stapleton made the request "pursuant to applicable law and Sections 4119 and 4405 of Metropolitan's Administrative Code." (*Id.*) Additionally, when Metropolitan moved to repeal Resolution 8520, Metropolitan noted that "[t]wo agreements exist with [SDCWA] that incorporate the Section 4405 wheeling rate as the contractual price term. However, now that the Water Stewardship Rate will no longer be in place, rendering the Section 4405 wheeling rate inoperative, the price term for those two agreements must be renegotiated." (DTX 2529.) Those two agreements were the SDCWA-Semitropic and SDCWA-Fallbrook agreements. (RT 62-64, 217-220; DTX 177, 698.)

Under former Administrative Code section 4405, wheeling service rates included "the System Access Rate, Water Stewardship Rate and, for treated water, the Treatment Surcharge In addition, wheeling parties must pay for their own cost for power . . . or pay the District for the actual cost (not system average) of power service utilized for delivery of the wheeled water." (DTX2718 § 4405(b).) Furthermore, wheeling parties were required to pay "an administration fee of not less than \$5,000 per

Although not dispositive, San Diego's course of conduct outside the Exchange Agreement provides further support that the Exchange Agreement is distinct from a wheeling agreement. Moreover, in the context of San Diego's wheeling request and agreements, "applicable law" would include a determination of a reasonable credit for offsetting benefits under the Wheeling Statutes because San Diego requested wheeling service subject to Metropolitan's unused capacity rather than an allocation.

2. Metropolitan's Duty to Include A Reasonable Credit For Offsetting Benefits Did Not Arise.

As the Court ruled on San Diego's motion for summary adjudication, "Metropolitan has a duty to charge no more than fair compensation, which includes reasonable credit for any offsetting benefits pursuant to Water Code section 1811(c)." (May 11, 2022 Order, 13.) However, "[w]hether that duty arose and whether Metropolitan breached that duty are issues to be resolved at trial." (*Id.*) The duty to charge fair compensation, including a reasonable credit for any offsetting benefits pursuant to Water Code section 1811(c), did not arise. Accordingly, Metropolitan did not breach the Exchange Agreement by not providing San Diego with a reasonable credit for any offsetting benefits.

The Price term of the Exchange Agreement states that "the Price shall be equal to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies." (PTX65 § 5.2.) "[A]n ambiguity cannot be created by parsing out words outside their context." (Alameda County Flood Control & Water Conservation Dist. v. Dept. of Water Resources (2013) 213 Cal.App.4th 1163, 1179.)

Rather, the contract language "must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract." (Id., quoting Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co. (1993) 5 Cal.4th 854, 867 (cleaned up).) As a whole, the Exchange Agreement is not a wheeling agreement. Therefore, there is no "unused capacity" which San Diego uses under the Exchange Agreement because the Exchange Agreement sets forth specific and regular allocations of water. (See Water Code § 1810 [fair compensation to be paid for "use of a water conveyance facility which has unused capacity."].) The evidence presented at trial does not indicate Metropolitan had unused capacity that San Diego was using or seeking to use under the Exchange

Agreement for the rate years at issue.

Therefore, the Court finds the duty to charge fair compensation did not arise and that Metropolitan did not breach the Exchange Agreement by failing to calculate a reasonable credit for any offsetting benefits. As the Court finds Metropolitan did not breach the Exchange Agreement, the Court need not address damages.

II. Reformation of The Price Term.

Metropolitan's ninth cross-claim in the 2014 and 2016 actions and eleventh cross-claim in the 2018 action conditionally seek reformation of the Exchange Agreement's Price term if the Court determines that the Price term requires an offsetting benefits determination. As the Court finds the duty to charge fair compensation did not arise and that Metropolitan did not breach the Exchange Agreement by failing to determine offsetting benefits, Metropolitan's ninth cross-claim in the 2014 and 2016 actions and eleventh cross-claim in the 2018 action are moot. (See RT 73:20-74:7.)

III. Reformation of The Exchange Agreement and Declaration Of Metropolitan's Rights and Duties Under The Wheeling Statutes.

Metropolitan's eleventh cross-claim in the 2014 and 2016 actions and thirteenth cross-claim in the 2018 action seek reformation of the Exchange Agreement to articulate Metropolitan's rights and duties under the Wheeling Statutes if the Court determines that the Wheeling Statutes apply based on the facts presented at trial. Metropolitan's tenth cross-claim in the 2014 and 2016 actions and twelfth cross-claim in the 2018 action seek a declaration stating Metropolitan's full rights and duties under the Wheeling Statutes if the Court finds the Wheeling States apply to the Exchange Agreement.

As Metropolitan was not required to calculate offsetting benefits, it follows that the Wheeling Statutes do not apply to the Exchange Agreement. "The wheeling statutes consist of five statutes." (QSA Cases, 201 Cal.App.4th at 840; see Water Code § 1810 et seq.) "Construed together, the wheeling statutes are unambiguous. They prohibit the owner of a water conveyance facility that has unused capacity . . . from denying a bona fide transferor of water the use of that facility if fair compensation is paid." (QSA Cases, 201 Cal.App.4th at 841, citing Water Code § 1810 (emphasis in original).) "[F]air compensation includes charges the owner, in this case the Metropolitan Water District, becomes subject to or liable for in using the conveyance system to wheel water when it has unused capacity." (Metropolitan

Water Dist. of Southern California, 80 Cal.App.4th at 1431 (internal citations and quotations omitted).)

[T]he legislative history shows that, consistent with state policy to facilitate the voluntary sale of water, the Legislature's aim was simply to *require* water conveyance system owners to make unused capacity in their facilities available for wheeling transfers. The Legislature recognized that in return for making its facilities available, a water conveyance system owner should be reasonably compensated for the use of the system.

(Id. at 1433 (emphasis in original).) Additionally,

The Legislature recognized the sale of excess water could be a source of income for farmers while also promoting efficient use of a scarce resource. To effectuate these goals, the Wheeling Statutes prohibit state, regional, or local agencies from withholding use of their water conveyance systems by others provided that unused wheeling capacity is available and fair compensation is paid to the conveyance owners.

(Central San Joaquin Water Conservation Dist. v. Stockton East Water Dist. (2016) 7 Cal.App.5th 1041, 1049.)

If the Exchange Agreement was a wheeling agreement, then the Wheeling Statutes would apply. However, the Exchange Agreement is not a wheeling agreement because it provides for a specific allocation of water that Metropolitan is obligated to deliver on a monthly basis regardless of what capacity, if any, is available in its system. Accordingly, the Wheeling Statutes do not apply, which renders Metropolitan's tenth and eleventh cross claims in the 2014 and 2016 actions, as well as the twelfth and thirteenth causes of action in the 2018 action, moot. (See RT 75:25-75:6.)

IV. Writ of Mandate, Declaratory Relief, and Determination of Invalidity.

San Diego's first three causes of action in the 2014, 2016, and 2018 actions seek a writ of mandate, declaratory relief, and a determination of invalidity regarding Metropolitan's wheeling and transportation rates charged under the Exchange Agreement for calendar years 2015 to 2020. (2014 FAC ¶ 61-91; 2016 SAC ¶ 53-77; 2018 SAC ¶ 60-85.) San Diego alleges two distinct theories to support its claims. First, San Diego asserts Metropolitan unlawfully included the WSR in its wheeling and transportation rates charged under the Exchange Agreement. (2014 FAC ¶ 35-37; 2016 SAC ¶ 36-37; 2018 SAC ¶ 40-42.) Second, San Diego alleges Metropolitan's wheeling and transportation rates charged under the Exchange Agreement unlawfully disregard Metropolitan's statutory obligation to provide "reasonable credit for any offsetting benefits for the use of [Metropolitan's] conveyance system." (Water Code § 1811(c); see 2014 FAC ¶ 38-40; 2016 SAC ¶ 38-40; 2018 SAC ¶ 43-46.) Furthermore,

CERTIFICATE OF ELECTRONIC SERVICE

(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 14, 2023, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: March 14, 2023

Mark Culkins, Interim Clerk

/: ______



San Francisco County Superior Court

MAR 1 4 2023

CLERK OF THE COURT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 306

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SAN DIEGO COUNTY WATER AUTHORITY

Lead Case No. CPF-14-514004 Consolidated with Case Nos. CPF-16-515282 and CPF-18-516389

AMENDED ORDER GRANTING IN PART AND DENYING IN PART SAN DIEGO COUNTY WATER AUTHORITY'S MOTION FOR PARTIAL JUDGMENT

On June 24, 2022, San Diego County Water Authority ("San Diego") filed the instant motion. On July 15, 2022, Metropolitan Water District of Southern California ("Metropolitan") filed an opposition to the motion. The matter was deemed submitted on July 20, 2022. On September 14, 2022, the Court granted in part and denied in part San Diego's Motion for Partial Judgment. The Court granted San Diego's motion as to: (1) Metropolitan's fifth affirmative defense under the dispute resolution provision in the 2014 and 2016 actions; (2) Metropolitan's eleventh affirmative defense of waiver; and (3) Metropolitan's seventeenth affirmative defense of consent. The Court denied San Diego's motion as to: (1) Metropolitan's ninth and eleventh cross-claims for reformation in the 2014 and 2016 actions; (2) Metropolitan's eleventh and thirteenth cross-claims for reformation in the 2018 action; (3) Metropolitan's twenty-seventh affirmative defense for mistake of fact; and (4) Metropolitan's twenty-eighth affirmative defense for mistake of law.

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The Court deferred ruling on Metropolitan's fifth cross-claim in the 2014 and 2016 actions and the seventh cross-claim in the 2018 action for declaratory relief regarding cost causation. The Court heard oral argument on the declaratory relief issue on September 27, 2022 during closing arguments. The matter as to cost causation was deemed submitted on December 16, 2022. Having considered the arguments and written submissions of the parties, San Diego's motion is granted as to Metropolitan's fifth cross-claim in the 2014 and 2016 actions and the seventh cross-claim in the 2018 action for declaratory relief regarding cost causation.

BACKGROUND

Respondent and Defendant Metropolitan is a public agency that imports, stores, and transports water throughout southern California. (2014 First Amended Complaint ("FAC"), ¶ 2.) Metropolitan has twenty-six member agencies, including Petitioner and Plaintiff San Diego. (Id. ¶ 16.) In addition to selling water to its member agencies, Metropolitan provides wheeling service to transport Non-Metropolitan Water to third parties. (Id. ¶ 21.) "Wheeling" is the industry term of art for the "use of a water conveyance facility by someone other than the owner or operator to transport water." (Id., quoting SDCWA v. MWD (2017) 12 Cal. App.5th 1124, 1135 ("SDCWA I").) Because Metropolitan owns the only water distribution facilities linking the Colorado River to San Diego's service area, San Diego and Metropolitan negotiated the 2003 Exchange Agreement ("Exchange Agreement") for delivery of San Diego's Non-Metropolitan Water to San Diego's own distribution and water storage facilities. (2014 FAC, ¶ 18.) Under the Exchange Agreement, the parties agreed the price for transporting San Diego's Non-Metropolitan Water "shall be equal to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies." (Id. ¶ 20, Ex. A [the Exchange Agreement], § 5.2.) Metropolitan also "imposes a Water Stewardship Rate on all water sales and wheeling transactions, including the transportation of [San Diego's] Non-Metropolitan Water under the Exchange Agreement, and uses these funds to pay for its demand management and water conservation programs." (Id. ¶ 16.)

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¹ The Court cites the FAC in the 2014 action for background as the allegations are the same or similar across all three actions.

Non-Metropolitan Water is independent conserved water from the Colorado River and lining of the All-American and Coachella Canals procured by San Diego. (*Id.* ¶ 17.)

The complaints in all three actions raise two theories of illegality and breach. First, San Diego asserts Metropolitan unlawfully included in its wheeling and transportation rates the Water Stewardship Rate—a charge unrelated to transportation, and used instead to pay the costs of demand management projects—and thus breached the parties' Exchange Agreement. Second, San Diego asserts that Metropolitan's failure to provide the statutorily and contractually mandated credit for offsetting benefits was also unlawful and breached the Exchange Agreement.

San Diego now moves for partial judgment pursuant to Code of Civil Procedure section 631.8. (Opening Brief, 1.) In particular, San Diego argues Metropolitan failed to carry its burden of proof on four discrete issues: (1) Metropolitan's affirmative defense under the Exchange Agreement's dispute resolution provision (Paragraph 11.1 Defense); (b) Metropolitan's affirmative defenses of waiver and consent; (c) Metropolitan's cross-claims for reformation and related affirmative defenses of mistake; and (d) Metropolitan's cross-claim for a declaration on cost-causation. (*Id.*) Metropolitan opposes the motion.

LEGAL STANDARD

"After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party." (Code Civ. Proc., § 631.8(a).) "If it appears that the evidence presented supports the granting of the motion as to some but not all the issues involved in the action, the court shall grant the motion as to those issues and the action shall proceed as to the issues remaining." (Code Civ. Proc., § 631.8(b).)

DISCUSSION

I. Dispute Resolution Provision

San Diego argues the Court should grant partial judgment as to Metropolitan's fifth affirmative defense under the dispute resolution provision in the 2014 and 2016 actions. (Opening Brief, 2.) San

Diego asserts Metropolitan's General Manager, Jenrey Rightlinger, and San Diego's former General
Manager, Maureen Stapleton, testified that San Diego complied with Paragraph 11.1 as confirmed by
documentary evidence. (Id.) Metropolitan opposes on the ground that San Diego's dispute resolution
letters do not address offsetting benefits or constitute reasonable best efforts to resolve a dispute.
(Opposition, 3.) Metropolitan argues San Diego's motion is devoid of any argument regarding reasonable
best efforts or how San Diego met that standard under the Exchange Agreement for 2014 and 2016. (Id.
at 2.) Metropolitan contends "[t]he only evidence that San Diego raised offsetting benefits to
Metropolitan is in the negotiations leading up to the 2018 litigation." (<i>Id.</i> at 3.)

Paragraph 11.1 of the Exchange Agreement states in pertinent part: "The Parties shall exercise reasonable best efforts to resolve all disputes, including Price Disputes, arising under this Agreement through negotiation . . . In the event negotiation is unsuccessful, then the Parties reserve their respective rights to all legal and equitable remedies." (PTX65, ¶ 11.1.)

Mr. Kightlinger's testimony reveals that the parties did not discuss the dispute regarding offsetting benefits until 2018. (See May 26, 2022 TR, 1489-1490.) In particular, Mr. Kightlinger testified that there were no discussions raised by San Diego about offsetting benefits in May of 2014. (*Id.* at 1489-1490 ["the first time I saw it in writing was in that 2018 letter."], 1491.) Mr. Kightlinger further testified that during the "11.1 discussions, offsetting benefits was not raised." (*Id.* at 1490:13-14.)

However, Mr. Kightlinger confirmed that any discussion about offsetting benefits was futile because Metropolitan's position is, and has always been, that this was not a wheeling transaction, and is instead an exchange agreement. (*Id.* at 1373-1374, 1376-1377, 1379-1381.) Therefore, whatever year was involved, the response from Metropolitan would be the same—the wheeling statutes do not apply. Mr. Kightlinger's testimony at trial that he believed San Diego complied with Paragraph 11.1 to "these lawsuits at issue in this case" is binding. (*Id.* at 1489:15-19; see also *id.* at 1485-1487, 1489.)

Moreover, Maureen Stapleton, San Diego's former General Manager, testified that San Diego attempted to resolve its disputes with Metropolitan regarding offsetting benefits by presenting to Metropolitan's Board of Directors, participating in the rate-setting processes, providing written documentation, and hiring a rates analyst to offer an opinion on appropriate cost allocations. (May 19,

2022 TR, 766-767.) Although the dispute letters did not expressly reference offsetting benefits, Ms. Stapleton testified that the reference to the price to be charged in violation of the Exchange Agreement was based on San Diego's belief "that the rates that were being proposed violated all applicable laws and regulations regarding the setting of the wheeling rate." (*Id.* at 769:19-770:1.)

Furthermore, as to the 2014 letter, San Diego proposed two specific dates for negotiation to ensure "there was adequate time between when [San Diego] negotiated with Met[ropolitan] and when [Metropolitan's] board of directors was being asked to approve the rates." (*Id.* at 771; see PTX892.) Metropolitan did not respond to the 2014 letter. (May 19, 2022 TR 772:11-15.) As to the 2016 letter, San Diego received a response from Metropolitan and the parties participated in negotiations. (*Id.* at 772-777; see PTX915, PTX 918.) Ms. Stapleton testified that San Diego raised the offsetting benefits issue during negotiations and Metropolitan would not agree to provide any offsetting benefit credit to San Diego. (*Id.*)

Accordingly, San Diego's motion is granted as Metropolitan's fifth affirmative defense under the dispute resolution provision in the 2014 and 2016 actions.

II. Affirmative Defenses of Waiver and Consent

San Diego seeks judgment in its favor as to Metropolitan's eleventh affirmative defense of waiver and seventeenth affirmative defense of consent. (Opening Brief, 3.) San Diego asserts "Metropolitan's witnesses have admitted, and San Diego's witnesses have confirmed, that there is no signed waiver—much less a signed *continuing* waiver—by San Diego, as required for any alleged waiver or consent to be effective under the Exchange Agreement." (*Id.*) Metropolitan does not oppose. (Opposition, 1 fn. 1.) Accordingly, San Diego's motion is granted as to Metropolitan's eleventh affirmative defense of waiver and seventeenth affirmative defense of consent.

III. Reformation and Related Affirmative Defenses of Mistake

San Diego seeks judgment in its favor as to Metropolitan's ninth and eleventh cross-claims in the 2014 and 2016 actions, and eleventh and thirteenth cross-claims in the 2018 action, for reformation. (Opening Brief, 3-4.) San Diego also seeks judgment in its favor as to Metropolitan's twenty-seventh and twenty-eighth affirmative defenses for mistake of fact and law. (*Id.* at 4.)

"Civil Code section 3699 provides the authority upon which a contract may be reformed: 'When,

through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised, on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for good value." (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 908, quoting Civil Code, § 3699.) "The 'intention of the parties,' as stated in Civil Code section 3699, refers to a 'single intention which is entertained by both parties." (*Jolley*, 213 Cal.App.4th at 908, quoting *Shupe v. Nelson* (1967) 254 Cal.App.2d 693, 700.) "The essential purpose of reformation is to reflect the intent of the parties." (*Jolley*, 213 Cal.App.4th at 908, quoting *Jones v. First American Title Ins. Co.* (2003) 107 Cal.App.4th 381, 389.)

San Diego relies on the deposition testimony of Bill Hasencamp, trial testimony of Mr.

Kightlinger, and Metropolitan's response to Form Interrogatory 50.6. (See PTX1148; PTX 1177; May 18, 2022 TR; May 26, 2022 TR.) First, Mr. Hasencamp testified that Metropolitan does not believe that there was a mistake in drafting the Exchange Agreement. (PTX 1148, 119:25-120:15.) Second, Metropolitan's response to Form Interrogatory 50.6 states that any agreement alleged in the pleadings is not ambiguous. (PTX 1177, 24-25; see May 26, 2022 TR 1407:15-17 [Mr. Kightlinger testified that the Exchange Agreement is not ambiguous].) Third, Mr. Kightlinger testified that the Quantification Settlement Agreements, which included the Exchange Agreement, were all tied together. (May 26, 2022 TR, 1420:14-23; see also May 18, 2022 TR, 575:15-576:3.)

However, San Diego's interpretation of Metropolitan's cross-claims and affirmative defenses is misplaced. Metropolitan seeks reformation *if* the Court finds that the Exchange Agreement is subject to the Wheeling Statutes. (See Opposition, 6-7 (emphasis added).) Similarly, Metropolitan's mistake of fact and law defenses are conditioned on a finding that the Exchange Agreement is subject to the Wheeling Statutes. (See *id*.) Therefore, San Diego's reliance on testimony regarding any ambiguity in the Exchange Agreement is not relevant to the issue at bar. As a result, San Diego's evidence does not support granting partial judgment on the issue of reformation and mistake.

Moreover, Metropolitan's evidence cited in opposition to San Diego's motion supports

Metropolitan's position. Deven Upadhyay, Metropolitan's Executive Officer and Assistant General

Manager, testified that Metropolitan did not believe the Exchange Agreement was a wheeling agreement. (May 25, 2022 TR, 1310:19-21; see also *id.* at 1311:25-1312:1 ["I've had many, many conversations with [San Diego] management about the administration of this agreement; and, quite frankly, in those discussions, we don't treat it as a wheeling agreement. It's an exchange agreement."].) Additionally, Mr. Kightlinger testified that during the rate years in question in this litigation, Metropolitan did not make any offsetting determinations or calculations "[b]ecause it didn't apply. This was not a wheeling transaction." (May 26, 2022 TR, 1376:24-1377:10; see also *id.* at 1378-1380.) Brian Thomas, former Metropolitan Chief Financial Officer, also testified that during negotiations for the 2003 Exchange Agreement, he did not recall himself or anyone else at Metropolitan telling San Diego that the agreement would be subject to the Wheeling Statutes. (May 26, 2022 TR, 1525:27-1526:8; see also *id.* at 1533-1534; May 19, 2022 TR, 675-676.)

Accordingly, San Diego's motion is denied as to this issue.

IV. Cost Causation

San Diego seeks judgment in its favor as to Metropolitan's fifth cross-claim in the 2014 and 2016 actions and Metropolitan's seventh cross-claim in the 2018 action for declaratory relief regarding cost causation. (Opening Brief, 5-6.) San Diego argues Metropolitan failed to demonstrate that cost causation is a proper subject of declaratory relief and that an actual controversy exists. (*Id.* at 6.) In opposition, Metropolitan asserts the Cross-Complaints allege the parties interpret the term "cost causation" differently and seeks a declaration as to the meaning of the term "cost causation." (Opposition, 8-9.)

To qualify for declaratory relief, a party must demonstrate that its action presents two essential elements: (1) a proper subject of declaratory relief; and (2) an actual controversy involving justiciable questions regarding the parties' rights and obligations. (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582; *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909; see also *Parkford Owners for a Better Community v. County of Placer* (2020) 54 Cal.App.5th 714, 722.) Even in an action presenting a proper subject for declaratory relief, there must be an "actual controversy." (See Code Civ. Proc., § 1060; *Wilson*, 191 Cal.App.4th at 1582.) Further, even where an "actual controversy" is presented, the Court may refuse to exercise its power to grant

declaratory relief in any case where its declaration or determination is not necessary or proper at the time under all the circumstances. (See Code Civ. Proc. § 1061.)

These requirements incorporate principles of ripeness. (See *Wilson*, 191 Cal.App.4th at 1582.) A probable future controversy relating to the legal rights and duties of the parties are an "actual controversy," but a conjectural controversy that is anticipated to occur in the future or an attempt to obtain an advisory opinion from the court is not an "actual controversy." (See *id*.) To evaluate ripeness, courts in turn evaluate the fitness of the issue for judicial decision and the hardship that may result from withholding court consideration. (*Id*.)

In evaluating the fitness of an issue for judicial decision, courts consider whether the abstract posture of the proceeding makes it difficult to evaluate the issues or requires the court to speculate on the resolution of hypothetical situations. (*Id.* at 1582-1583.) In evaluating whether a party will suffer hardship from delayed judicial review, a court may consider whether there will be appropriate legal remedies available should judicial review become appropriate. (See *id.* at 1585.)

Metropolitan alleges "[t]he parties agree that a 'cost causation' concept applies to Metropolitan's rates; however, the parties interpret that term differently." (2014 XC ¶ 87, 2016 XC ¶ 87, 2018 XC ¶ 109.) Metropolitan alleges San Diego's position is "that Metropolitan should determine which member agency caused each cost, and then charge only that member agency for that cost." (2014 XC ¶ 89, 2016 XC ¶ 89, 2018 XC ¶ 111.) Metropolitan seeks "a judicial declaration that the applicable legal standards for Metropolitan's rates are reasonableness, resulting in revenue which will pay the costs of the district, and uniform for like classes of service." (2014 XC ¶ 90, 2016 XC ¶ 90, 2018 XC ¶ 112.)

As to cost causation, the only evidence presented at the time San Diego filed this motion was the trial testimony of Richard Giardina, a financial advisor to local government utilities and Metropolitan's expert. (RT 1635:22-1636:2, 1645:18-20.) Mr. Giardina testified that:

Cost causation is a principle and theory where you're attempting to understand why the costs that are incurred, in this case by a water utility, why those costs are incurred for what purpose. And the cost-of-service process takes that cost causation and follows it through from the very beginning to ultimately the rates that are charged for service. So understanding the purpose behind the costs, the service it supports, it's basically taking that principle and using it through the cost-of-service methodology to end up with supportable rates, rates that are, in the industry, considered to be reasonably developed, fair, and equitable.

(RT 1635:22-1636:2, 1645:18-20, 1648:16-28.) Mr. Giardina does not know of any other definition of cost causation other than the definition in the M1 manual. (Id. at 1649:1-4; see id. at 1646:14-16 [industry standards of practice are articulated in the M1 manual of AWWA].) Mr. Giardina opined that the cost-of-service methodology Metropolitan followed in setting its 2015 through 2020 rates was consistent with the standards of practice articulated by the AWWA in the M1 manual, including cost causation principles. (Id. at 1648:3-14.) Mr. Giardina also testified that Metropolitan's cost-of-service process includes four steps: (1) identifying the cost that should be recovered through rates; (2) functionalizing costs; (3) allocation of costs; and (4) distribution of costs to rate elements. (Id. at 1649:21-1650:25; see *id.* at 1652:12-1656:27, 1658:11-15.) "[T]he end result of that process is . . . 'unbundled rate elements, uniform across the entire regional service area, and they do not vary by member agency." (Id. at 1659:18-21.) Mr. Giardina testified that "cost causation requires a link between the utility's cost and the activity that caused that cost to be incurred" with the caveat "that there can also be other objectives that a utility, a community may have that would cause it to look at cost causation, balance cost causation with these other objectives." (Id. at 1697:18-24.) Mr. Giardina agreed that "at least as a general rule, that a customer for a utility like Metropolitan should not pay for services they don't receive." (Id. at 1697:25-28.)

The Court finds Metropolitan cannot demonstrate a declaration regarding cost causation is the proper subject for declaratory relief. "[T]he power to grant declaratory relief does not purport to confer upon courts the authority to control administrative discretion." (*Abatti v. Imperial Irrigation District* (2020) 52 Cal.App.5th 236, 290, quoting *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 664 (internal quotations omitted).) The parties do not dispute the meaning of cost causation rather the parties dispute its application.

Metropolitan is required by statute to establish rates that will generate sufficient revenue to pay its expenses. (Wat. Code Appen., § 109-134.) In adopting the new rate structure, effective 2003, Metropolitan represented that it was designed to create "a cost of service approach consistent with industry guidelines," "[e]nsure that users, including member agencies and other entities, pay the same rates and charges for like classes of services and provide fair allocation of costs through rates and charges," and "[o]ffer choices for services to member agencies and accommodate the development of a water transfer market."

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(SDCWA I, 12 Cal.App.5th at 1137.) According to Mr. Giardina's testimony, the only definition of cost causation is found in the M1 manual, which articulates industry standards of practice and "guidelines." (RT 1646:14-16, 1649:1-4, 1698:28.) Metropolitan has tailored those guidelines to its operational structure and service environment. (Id. at 1657:15-18.) The commodity demand technology used by Metropolitan is endorsed and recommended by AWWA. (Id. at 1657:25-1658:1.)

Mr. Giardina's testimony demonstrates that cost causation does not mandate a certain application such as uniform rates versus rates based on services used. "[C]ourts do not weigh competing methodologies to determine the best water rates." (SDCWA I, 12 Cal.App.5th at 1149.) By granting declaratory relief, the Court would be endorsing one specific application of cost causation. The Court declines to do so here. (See Code Civ. Proc. § 1061 ["The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances."]; Abatti, 52 Cal.App.5th at 291 [trial court "usurped its authority in declaring that historical apportionment is the only reasonable method of apportionment."].) Therefore, San Diego's motion is granted as to Metropolitan's cross-claims for declaratory relief regarding cost causation.

CONCLUSION AND ORDER

Based on the foregoing reasons, San Diego's motion is granted as to: (1) Metropolitan's fifth affirmative defense under the dispute resolution provision in the 2014 and 2016 actions; (2) Metropolitan's eleventh affirmative defense of waiver; (3) Metropolitan's seventeenth affirmative defense of consent; and (4) Metropolitan's fifth cross-claim in the 2014 and 2016 actions and Metropolitan's seventh cross-claim in the 2018 action for declaratory relief regarding cost causation. San Diego's motion is denied as to: (1) Metropolitan's ninth and eleventh cross-claims for reformation in the 2014 and 2016 actions; (2) Metropolitan's eleventh and thirteenth cross-claims for reformation in the 2018 action; and (4) Metropolitan's twenty-seventh and twenty-eighth affirmative defenses for mistake of fact and law.

IT IS SO ORDERED.

Dated: March 15, 2023

Den. Chufne Messieles

Anne-Christine Massullo Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE

(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 14, 2023, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: March 14, 2023

Mark Culkins, Interim Clerk

 R_{V}

Ericka Larnauti, Deputy Clerk

Summary Report for The Metropolitan Water District of Southern California Special Board Meeting February 28, 2023

CONSENT CALENDAR OTHER ITEMS – ACTION

Director Fong-Sakai was added to the Finance, Audit, Insurance and Real Property Committee. (Agenda Item 5A)

Adopted resolution authorizing remote teleconference meetings pursuant to the Brown Act Section 54953(e) for meetings of Metropolitan's legislative bodies for a period of 30 days. (Agenda Item 5B)

THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES OF THE MEETING.

All current month materials, and materials after July 1, 2021 are available on the public website here: https://mwdh2o.legistar.com/Calendar.aspx

This database contains archives from the year 1928 to June 30, 2021: https://bda.mwdh2o.com/Pages/Default.aspx

Summary Report for The Metropolitan Water District of Southern California Board Meeting March 14, 2023

CONSENT CALENDAR OTHER ITEMS – ACTION

Approved Commendatory Resolutions for Directors Phillip Hawkins and Robert Apodaca both representing Central Basin Municipal Water District; Randy Record representing Eastern Municipal Water District; Steve Blois representing Calleguas Municipal Water District; Satoru Tamaribuchi representing Municipal Water District of Orange County; and Harold C. Williams representing West Basin Municipal Water District. (Agenda Item 5B)

Approved Committee Assignments. (Agenda Item 5C)

Subcommittee on Pure Water Southern California and Regional Conveyance:

- A. Chacon, Chair
- J. Morris, Vice Chair
- D. Alvarez
- M. Camacho
- A. Fellow
- L. Fong-Sakai
- R. Lefevre
- M. Luna
- J. McMillan
- G. Peterson
- K. Seckel

Subcommittee on Bay-Delta:

- T. Quinn, Chair
- L. Ackerman, Vice Chair
- D. Alvarez
- J. Armstrong
- D. Erdman
- R. Lefevre
- M. Luna
- C. Miller
- T. Smith

CONSENT CALENDAR ITEMS – ACTION

(a) Adopted the Twenty-Fifth Supplemental Resolution to the Master Bond Resolution authorizing the issuance of up to \$330 million of Water Revenue Bonds, 2023 Series, and providing the terms and conditions for the sale and issuance of said Water Revenue Bonds; and (b) Approved approximately \$1.1 million for the payment of the costs of issuance of the Water Revenue Bonds to be paid from bond proceeds or Metropolitan funds. (Agenda Item 7-1)

Authorized issuing a license agreement to Brightline West for an initial fifty-year term with options to extend, totaling an additional fifty years. (Agenda Item 7-2)

(a) Authorized agreement with Black & Veatch Corporation, Inc. in an amount not to exceed \$8 million for the preliminary design of conveyance Reach 1 of the Pure Water Southern California program. (b) Authorized agreement with HDR Engineering, Inc. in an amount not to exceed \$9 million for preliminary design of conveyance Reach 2 of the Pure Water Southern California program. (c) Adopted a resolution to support a grant application to the U.S. Bureau of Reclamation for water recycling and desalination planning and authorized the General Manager or a designated representative to accept the grant if awarded. (Agenda Item 7-3)

Authorized an increase of \$500,000 in change order authority for the contract to replace the overhead bridge cranes at the five Colorado River Aqueduct pumping plants. (Agenda Item 7-4)

Authorized on-call agreements with Fugro USA Land, Inc., GeoPentech, Inc., Geosyntec Consultants, Inc., and Kleinfelder West, Inc., in amounts not to exceed \$3 million each, for a maximum period of five years for geotechnical engineering services. (Agenda Item 7-5)

Awarded a \$394,534 contract to Slater Waterproofing, Inc. to rehabilitate concrete walls within the ozone contactor structure at the Robert A. Skinner Water Treatment Plant. (Agenda Item 7-6)

Adopted the Mitigated Negative Declaration for the Copper Basin Discharge Valve Replacement and Access Road Improvements Project and take related CEQA actions. (Agenda Item 7-7)

Authorize the General Manager to enter into an agreement with Western Municipal Water District, Rubidoux Community Services District, West Valley Water District, and San Bernardino Valley Municipal Water District to provide Rubidoux Community Services District assistance with water deliveries. (Agenda Item 7-8) (Deferred to April)

Removed the Water Shortage Emergency Condition declared on April 26, 2022, for the SWP Dependent Area, terminated the Emergency Water Conservation Program and application of any penalties accrued. (Agenda Item 7-9)

Approved adoption of the salary schedule to ensure compliance with California Code Regulations, Section 570.5, and the negotiated MOUs. (Agenda Item 7-10)

Adopted two new Resolutions to ensure compliance with the current Memoranda of Understandings and Administrative Code 6521 according to Government Code Sections 20636, 20691, and California Code of Regulations Section 569. (Agenda Item 7-11)

Approved proposed amendment to Administrative Code Section 6471 to increase the amount of the Ethics Officer's authority to obtain professional services for external investigations from \$50,000 to \$100,000. (Agenda Item 7-12)

Authorized an increase in the maximum amount payable under contract with Burke, Williams & Sorensen, LLP for general real estate legal services by \$100,000 to a maximum amount payable of \$200,000. (Agenda Item 7-13)

Authorized the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by \$100,000 to a maximum amount payable of \$400,000. (Agenda Item 7-14)

(a) Approved amendments to the Metropolitan Water District Administrative Code, as shown in Attachment 2 of the Board letter, to provide for the implementation of new legislation authorizing the use of alternative project delivery methods. (b) Adopted an organizational conflict-of-interest policy, as shown in Attachment 3 of the Board letter, governing the solicitation of a design-build or progressive design-build project. (c) Authorized an increase in the maximum amount payable under contract with Hanson Bridgett LLP for legal services related to implementation of new legislation by \$150,000 to an amount not to exceed \$250,000. (Agenda Item 7-15)

Authorized increase in maximum amount payable under contract for legal services with Seyfarth Shaw LLP in the Reese v. Metropolitan lawsuit in the amount of \$300,000 for a total amount not to exceed \$400,000. (Agenda Item 7-16)

OTHER MATTERS AND REPORTS

Presented Commendatory Resolution honoring Director Gloria D. Gray, West Basin Municipal Water District for her leadership during her term as Chair of Metropolitan's Board of Directors. (Agenda Item 5G)

THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES OF THE MEETING.

All current month materials, and materials after July 1, 2021, are available on the public website here: https://mwdh2o.legistar.com/Calendar.aspx

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Upcoming Board Items

ANTICIPATED KEY ITEMS OF FOCUS – NOT AN EXHAUSTIVE LIST SCHEDULE SUBJECT TO CHANGE

April	Quarterly Desert Housing update
May	 Update on Direct Potable Reuse regulations Review of Draft Supplemental Environmental Impact Statement for Colorado River Interim Guidelines Update on Climate Vulnerability and Risk Assessment Authorization to amend PVID fallowing agreement and accept Inflation Reduction Act funding
June	 Award two Drought Resilience Construction Contracts on east side of system Authorize Agreement(s) to conduct Desalination Studies
July	 Quarterly Desert Housing update Approve new Colorado River implementing agreements General Manager's Business Plan update Award 1 Drought Resilience Construction Contract on east side of system Emergency Management Program Update
August	 Update on Sites Reservoir Project Award Phase 1 Progressive Design Build services contract for Sepulveda Pump Stations project for drought resilience

The schedule of the following upcoming board items has not yet been determined:

September	 Long Range Finance Plan – Phase 1
· _	Metropolitan Storage Portfolio workshop
- March	Sustainability, Resiliency, and Innovation Strategic Plan workshop
	Update on Voluntary Agreements package
	Federal grants for large recycled water projects

The Metropolitan Water District of Southern California

Agenda

The mission of the Metropolitan Water District of Southern California is to provide its service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

Board of Directors

April 11, 2023

12:00 PM

Tuesday, April 11, 2023 Meeting Schedule

09:30 a.m. FAIRP 11:30 a.m. Break 12:00 p.m. BOD 01:30 p.m. EOP

Agendas, live streaming, meeting schedules, and other board materials are available here: https://mwdh2o.legistar.com/Calendar.aspx. A listen-only phone line is available at 1-877-853-5257; enter meeting ID: 891 1613 4145. Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference 1-833-548-0276 and enter meeting ID: 815 2066 4276.

MWD Headquarters Building - 700 N. Alameda Street - Los Angeles, CA 90012

1. Call to Order

- a. Invocation: Director Arturo Chacon, Central Basin Municipal Water District
- b. Pledge of Allegiance: TBD

2. Roll Call

- 3. Determination of a Quorum
- 4. Opportunity for members of the public to address the Board on matters within the Board's jurisdiction. (As required by Gov. Code §54954.3(a))

5. OTHER MATTERS AND REPORTS

A.	Report on Directors' Events Attended at Metropolitan's Expense	21-2044
B.	Chair's Monthly Activity Report	21-2045
C.	General Manager's summary of activities	21-2046
D.	General Counsel's summary of activities	21-2047

i. Brown Act Compliance: Social Media Update

E.	General Auditor's summary of activities	21-2048
F.	Ethics Officer's summary of activities	21-2049
G.	Presentation of Commendatory Resolutions for Directors Phillip D. Hawkins and Robert Apodaca both representing Central Basin Municipal Water District; Randy Record representing Eastern Municipal Water District; Steve Blois representing Calleguas	21-2050

Hawkins and Robert Apodaca both representing Central Basin Municipal Water District; Randy Record representing Eastern Municipal Water District; Steve Blois representing Calleguas Municipal Water District; Satoru Tamaribuchi representing Municipal Water District of Orange County; and Harold C. Williams representing West Basin Municipal Water District for their service during their terms as Metropolitan's Board of Directors

H. Presentation of 10-year Service Pin to Director Cynthia Kurtz, Cityof Pasadena

Presentation of 15-year Service Pin to Director Linda Ackerman,
 Municipal Water District of Orange County

** CONSENT CALENDAR ITEMS -- ACTION **

6. CONSENT CALENDAR OTHER ITEMS - ACTION

A. Approval of the Minutes of the Special Board of the Directors

Meeting for February 28, 2023 and Minutes of the Board of the

Directors Meeting for March 14, 2023 (Copies have been submitted
to each Director, any additions, corrections, or omissions)

B. Approve Committee Assignments 21-2052

7. CONSENT CALENDAR ITEMS - ACTION

- 7-1 Adopt CEQA determination that the proposed action was previously addressed in the Mitigated Negative Declaration and related CEQA actions, and award an \$8,656,568 contract to Granite Construction Company for construction of structural protection measures at 24 cut-and-cover conduit locations along the Colorado River Aqueduct; authorize agreements with: (1) Environmental Science Associates in an amount not to exceed \$1,200,000 for biological surveys and environmental monitoring; and (2) Deto, Inc. in an amount not to exceed \$325,000 for compensatory environmental mitigation credits (EOT)
- 7-2 Award a \$6,174,000 contract to West Valley Investment Group for seismic upgrades to the Foothill Control Building; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EOT)

7-3 Award a \$8,248,723 procurement contract to Sojitz Machinery 21-2055 Corporation of America for three large-diameter butterfly valves to be installed at Foothill Pump Station Intertie as part of water supply reliability improvements in the Rialto Pipeline service area; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EOT) 7-4 Authorize an agreement with Stantec Consulting Services, Inc. in 21-2056 an amount not to exceed \$900,000 for a detailed seismic analysis of the Lake Skinner outlet tower; and award a \$1,174,475 procurement contract to B&K Valves and Equipment, Inc. for the replacement of two valves at the Lake Skinner outlet tower; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EOT) 7-5 Authorize an amendment to an existing agreement with Brown & 21-2054 Caldwell, for a \$475,000 increase to a new not-to-exceed amount of \$715,000, to investigate potential modifications to Metropolitan's existing East-West conveyance and distribution system; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EOT) 7-6 Authorize an increase of \$5.4 million to an existing agreement with 21-2058 Arcadis U.S., Inc., for a new not-to-exceed total amount of \$6.35 million, for engineering design services to rehabilitate Garvey Reservoir; the General Manager has determined that this proposed action is exempt or otherwise not subject to CEQA (EOT) 7-7 Authorize an agreement with Canary Systems California, LLC, for 21-2059 an amount not-to-exceed \$1.95 million to upgrade the data acquisition systems at Diamond Valley Lake and Garvey Reservoir; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EOT) 7-8 Authorize the General Manager to enter into an agreement with 21-2060 Western Municipal Water District, Rubidoux Community Services District, West Valley Water District, and San Bernardino Valley Municipal Water District to provide Rubidoux Community Services District assistance with water deliveries; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (OWS) 7-9 Approve and authorize the distribution of Appendix A for use in the 21-2062 issuance and remarketing of Metropolitan's Bonds; the General Manager has determined that the proposed action is exempt or

otherwise not subject to CEQA (FAIRP)

Page 4

7-10	Adopt resolutions fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2024; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA (FAIRP)	21-2063
7-11	Review and consider the Lead Agency's adopted Mitigated Negative Declaration and Addendum and take related CEQA actions, and adopt resolution for 112th Fringe Area Annexation to Eastern Municipal Water District and Metropolitan (FAIRP)	21-2064
7-12	Authorize an award of a four-year contract for external audit services with TBD for a not to exceed amount of \$TBD; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (FAIRP)	21-2065
7-13	Approve proposed amendment to Administrative Code section 6450 regarding individual Board of Director requests for audit assignments; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (FAIRP)	21-2066
7-14	Authorize a credit to Western Municipal Water District for treatment surcharge costs incurred due to the unexpected extension of a Metropolitan shutdown; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (FAIRP)	21-2067
7-15	Authorize the General Manager to develop a Climate Adaptation Master Plan for Water [Missing CEQA] (FAIRP)	21-2068
7-16	Authorize the General Manager to co-sponsor AB 1572 (Friedman) Potable Water: Non-Functional Turf; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (LRAC)	21-2072
7-17	Adopt Policy Principles for Modernization of Water Rights Administration in California to Enhance Enforcement and Protect Supply Reliability; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (LRAC)	21-2073
7-18	Approve the nomination and naming of Metropolitan's Board Room in honor of former Metropolitan Board Chairman Phillip J. Pace; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (FN)	21-2074

** END OF CONSENT CALENDAR ITEMS **

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8. OTHER BOARD ITEMS - ACTION

NONE

9. BOARD INFORMATION ITEMS

9-1 Conservation Program Board Report

21-2071

Attachments: 04112023 OWS 9-1 Report

9-2 Update on Chino Basin Program Development with Metropolitan 21-2061 and Inland Empire Utilities Agency (OWS)

10. OTHER MATTERS

NONE

11. FOLLOW-UP ITEMS

NONE

12. FUTURE AGENDA ITEMS

13. ADJOURNMENT

NOTE: Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parenthesis at the end of the description of the agenda item, e.g. (EOT). Board agendas may be obtained on Metropolitan's Web site https://mwdh2o.legistar.com/Calendar.aspx

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site https://mwdh2o.legistar.com/Calendar.aspx.

Requests for a disability-related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.